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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~814~~ 70-21

SOCIALIST LABOR PARTY, *et al.*,

Appellants,

—v.—

JOHN J. GILLIGAN, Governor of the State of Ohio.

No. 1104

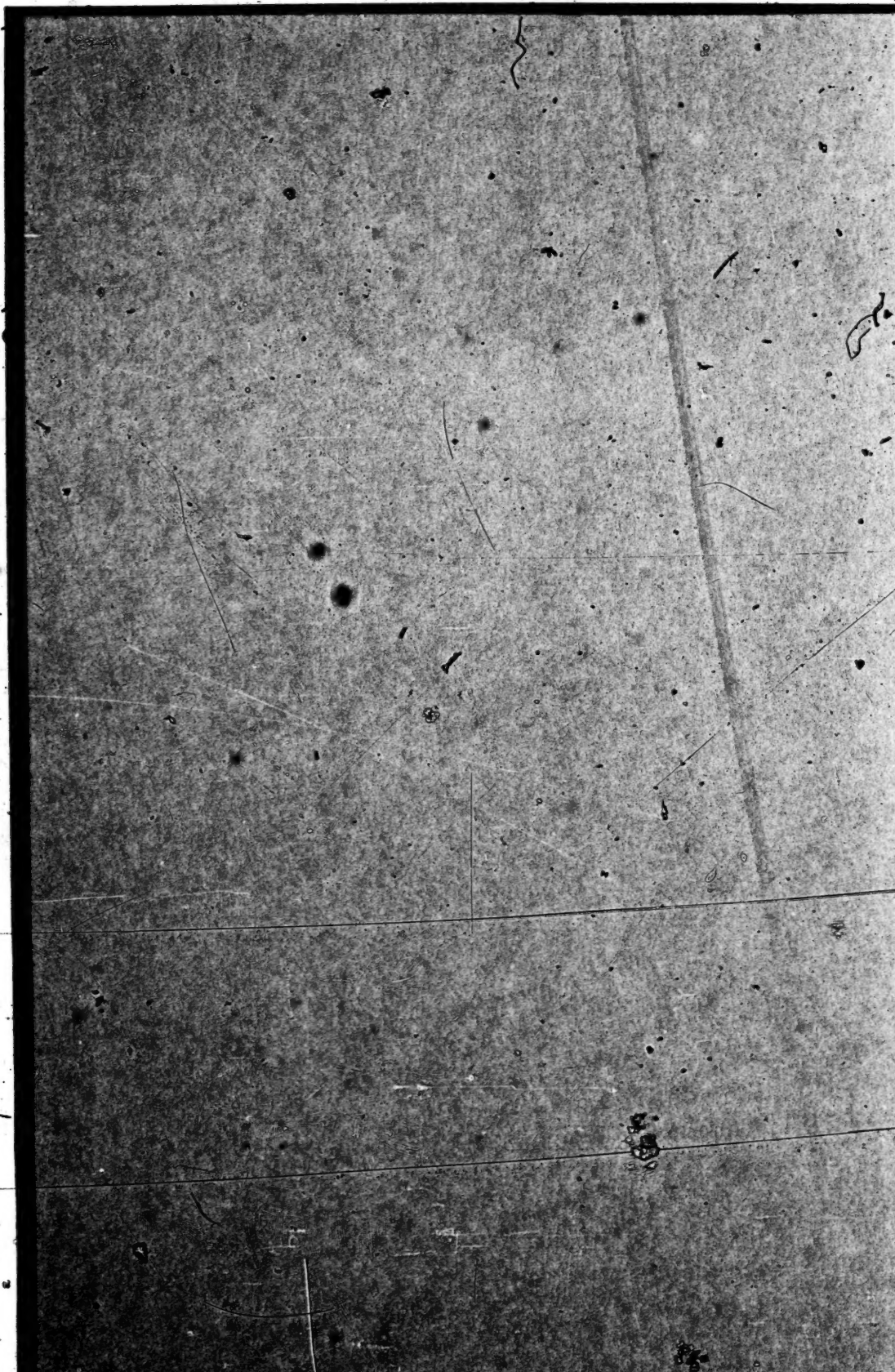
JOHN J. GILLIGAN, Governor of the State of Ohio,

—v.—

HELEN MARCIA SWEETENHAM, *et al.*

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

NO. 814 FILED OCTOBER 7, 1970
NO. 1104 FILED DECEMBER 14, 1970
JURISDICTION NOTED MARCH 29, 1971



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SOCIALIST LABOR PARTY, *et al.* v. GILLIGAN, No. 814

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Apr. 15, 1970	Plaintiffs' motion for summary judgment
May 5, 1970	Memorandum contra motion for summary judgment
July 29, 1970	Opinion
Aug. 17, 1970	Notice of Appeal to the Supreme Court of the United States
Aug. 17, 1970	Notice of Appeal to the Supreme Court of the United States

GILLIGAN v. SWEETENHAM, *et al.*, No. 1104

Jan. 28, 1970	Complaint
Apr. 20, 1970	Answer of Defendants Hughes, et al.
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July 31, 1970	Amended order
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Complaint

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CIVIL SUIT NO. 70-23

SOCIALIST LABOR PARTY, 116 Nassau Street, Brooklyn, New York,

OHIO STATE COMMITTEE, SOCIALIST LABOR PARTY, 7601 Lockyear Avenue, Cleveland, Ohio,

JOSEPH PIRINCIN, Member of the Socialist Labor Party, individually and on behalf of all others similarly situated, 7601 Lockyear Avenue, Cleveland, Ohio,

Plaintiffs,

—v.—

JAMES A. RHODES, In His Representative Capacity as Governor of the State of Ohio, Governor's Mansion, Columbus, Ohio,

TED W. BROWN, In His Representative Capacity as Secretary of State, State of Ohio, State House, Columbus, Ohio,

PAUL W. BROWN, In His Representative Capacity as Attorney-General, State of Ohio, State House, Columbus, Ohio,

Defendants.

Parties

1. The plaintiff Socialist Labor Party is a national American political party founded in 1890. It is a voluntary unincorporated association with its national office in Brooklyn, New York. Its purpose is to further and advance the acceptance of its political views throughout the United States. The Socialist Labor Party advocates a Socialist reconstruction of society. In support of this program and to win adherents to it the plaintiff Socialist Labor Party engages in traditional political activity. It nominates candidates for political office, prepares and publishes party platforms, and conducts political campaigns. It has engaged in such political activity since its founding in the nineteenth century and will continue to do so in the future.

From time to time its general and particular political views are made available to the public through written materials which it prepares, publishes and circulates. Plaintiff Socialist Labor Party publishes a newspaper called "Weekly People" which is circulated throughout the United States. Since 1892 it has run candidates for President of the United States in every presidential election. In 1964 the Party was on the ballot in 16 states and conducted a write-in campaign in 9 states; in 1968 it was on the ballot in 14 states and conducted a write-in campaign in 8 states, including Ohio.

2. The plaintiff Ohio State Committee of the Socialist Labor Party is the executive committee of the Ohio branch of the Socialist Labor Party. The Ohio branch of the Socialist Labor Party has nominated and run candidates for political office whose names have appeared on the ballot in Ohio dating from 1895. In that year it ran a candidate

for governor; in 1896 candidates for president and secretary of state; in 1897 for governor; in 1898 for secretary of state; in 1899 for governor; in 1900 for president and secretary of state; in 1901 for governor; in 1902 for secretary of state; in 1903 for governor; in 1904 for president and secretary of state; in 1905 for governor; in 1906 for secretary of state; in 1908 for president, governor, and secretary of state; in 1910 for governor and secretary of state; in 1912 for president, governor and secretary of state; in 1924 for president, governor and secretary of state; in 1926 for governor and secretary of state; in 1928 for president, governor and secretary of state; in 1932 for president, governor and secretary of state; and in 1946 for governor. In addition, the Party in Ohio has nominated other candidates continuously over the years both before and after 1946 whose names have not appeared on the ballot. It will continue to nominate candidates for political office in Ohio in the future. At its meeting of January 11, 1970, the Ohio State Committee nominated John O'Neill as the Socialist Labor Party candidate for governor of Ohio and Peter Kapitz as the Socialist Labor Party candidate for United States Senate for the 1970 election.

3. The plaintiff Joseph Pirincin is a citizen of Cleveland, Ohio, and is a duly qualified and registered voter in the City of Cleveland and State of Ohio. He is the duly elected, qualified and acting executive secretary of the Ohio branch of the Socialist Labor Party. Plaintiff Pirincin sues on behalf of himself and all other Ohio members of the Socialist Labor Party who seek to exercise freely the rights guaranteed them by the Constitution of the United States including the fundamental right to participate in free and democratic elections. These persons constitute a class too

numerous to bring before this Court. There are common questions of law and fact affecting all members of the class. A common relief is sought. Plaintiff Pirincin will adequately represent the class.

4. Defendant James A. Rhodes, as are his successors in office, is sued in his representative capacity as the duly elected, qualified and acting Governor of the State of Ohio with his office and official residence in Columbus, Ohio. The Governor is charged with the general duty of enforcing the statutes of the State of Ohio and with the particular responsibility under Ohio Revised Code 3505.38 of signing the certificates of election issued by the Secretary of State of Ohio to those persons declared duly elected to office. He is also charged with filling by appointment any vacancy in Ohio's representation to the Senate of the United States until the next regular state election as provided by Ohio Revised Code 3521.02; and with issuing writs for special elections as provided by Ohio Revised Code 3521.03.

5. Defendant Ted W. Brown, as are his successors in office, is sued in his representative capacity as the duly elected, qualified and acting Secretary of the State of Ohio with his office and official residence in Columbus, Ohio. The Secretary of State is charged under Ohio Revised Code Section 3505.39 with mailing certificates of election to presidential electors; and under Ohio Revised Code Section 3505.38 with issuing certificates of election to other state officers. Under Ohio Revised Code Section 3501.05 he is designated as the chief election officer of the State of Ohio and is charged with determining and prescribing the forms of ballots and the forms of all blanks required by law for

use by candidates, committees and boards of elections. He is further charged with certifying to the several boards of elections the names of candidates for state offices.

6. Defendant Paul W. Brown, as are his successors in office, is sued in his representative capacity as the duly qualified and acting attorney-general of the State of Ohio with his office and official residence in Columbus, Ohio. The attorney-general is the chief law officer for the State of Ohio and all of its departments as provided by Section 109.02, Ohio Revised Code. He has express statutory duties relative to the Ohio election process as set forth in Sections 3505.35, 3519.01, 3513.06, 3513.271 and 3515.13, Ohio Revised Code.

Jurisdiction

7. The Court has jurisdiction of the parties and of the subject matter of this complaint under 42 United States Code, Sections 1981, 1983 and 1988; 28 United States Code, Section 1343 (3), (4); and 28 United States Code, Sections 2201 and 2202; and Amendments I and XIV of the United States Constitution.

First Cause of Action

8. For their first cause of action plaintiffs incorporate by reference the allegations of paragraph 1 through 7 of this Complaint and say further as follows:

9. Plaintiffs say that for 80 years the Socialist Labor Party has been a bona fide American political party and that it seeks to be recognized as such by the State of Ohio. On July 2, 1968, the Socialist Labor Party and its Ohio members filed an action in this Court, Civil Action No. 68-

224,, seeking declaratory and injunctive relief and challenging the constitutionality of Section 3517.01, Ohio Revised Code. This statute prevented the Socialist Labor Party from qualifying as a political party in Ohio because it defined a political party as:

> . . . any group of voters which, at the last preceding regular state election, polled for its candidate for governor in the state at least ten per cent of the entire vote cast for governor or which filed with the secretary of state at least ninety days before an election a petition signed by qualified electors equal in number to at least fifteen per cent of the total vote for governor at the last preceding election, declaring their intention of organizing a political party, the name of which shall be stated in the declaration, and of participating in the next succeeding election. . . .

Based upon the 1966 vote for governor, the Socialist Labor Party would have needed 433,100 valid signatures to comply with the 15 per cent requirement, a figure which is and was prohibitive.

10. This Court declared in an opinion rendered on August 29, 1968, in Civil Action No. 68-224, "that to the extent that the Ohio Elections Laws impose unreasonable restrictions on the qualifications of political third parties . . . they are unconstitutional and 'void". In *Williams* v. *Rhodes*, 393 U.S. 23 (October 15, 1968), the United States Supreme Court affirmed this Court and expressly held the fifteen per cent statute to be an unreasonable burden on voting and associational rights and a violation of these plaintiffs' First and Fourteenth Amendment rights.

11. Plaintiffs say that subsequent to the Supreme Court's decision as above cited, the Ohio General Assembly amended Section 3517.01, Ohio Revised Code and the statute, effective October 30, 1969, now provides as follows:

> A political party within the meaning of Title XXXV [35] of the Revised Code is any group of voters which, at the last preceding regular state election, polled for its candidate for governor in the state or nominees for presidential electors at least seven per cent of the entire vote cast for such office or which filed with the secretary of state a petition signed by qualified electors equal in number to at least seven per cent of the total vote for governor or nominees for presidential electors at the last preceding election, declaring their intention of organizing a political party, the name of which shall be stated in the declaration, and of participating in the next succeeding primary election, held in even-numbered years, that occurs more than one hundred twenty days after the date of filing. No such group of electors shall assume a name or designation which is similar, in the opinion of the secretary of state, to that of an existing political party as to confuse or mislead the voters at an election. When any political party fails to cast seven per cent of the total vote cast at an election for the office of governor or president it shall cease to be a political party.

12. Plaintiffs say that Section 3517.01, Ohio Revised Code, as amended, contains the same constitutional infirmities possessed by its predecessor; that it imposes an unreasonable burden on plaintiffs' right of access to the ballot without the showing of a compelling necessity suffi-

cient to justify the burden; that the seven per cent (7%) standard for a new political party means that plaintiffs would have to file with the Secretary of State of Ohio 277,179 valid signatures in order to qualify the Socialist Labor Party to participate in the 1970 elections in Ohio; that this figure is prohibitive; that the companion requirement that a political party secure seven per cent of the votes cast for governor or president in order to preserve its status as a party is equally unreasonable and that no compelling necessity can be shown to justify such a requirement; that these plaintiffs are being denied the right to participate in the election process of the State of Ohio by virtue of a statute patently designed to perpetuate Ohio's two or three party political monopoly; and that plaintiffs' rights guaranteed them by the First Amendment and Due Process, Equal Protection, and Privileges and Immunities Clauses of the Fourteenth Amendment of the United States Constitution are violated by the arbitrary, unreasonable, repressive and prohibitive requirements of Section 3517.01, Ohio Revised Code.

SECOND CAUSE OF ACTION

13. For their second cause of action plaintiffs incorporate by reference the allegations of paragraphs 1 through 12 of this Complaint and say further as follows:

14. Plaintiffs say that Sections 3505.10, 3513.11, 3517.02, 3517.03 and 3517.04, Ohio Revised Code, impose upon political parties unduly burdensome and unreasonable requirements; and that even if the number of signatures of voters required for a new political party to qualify was reduced to constitutionally permissible dimensions, there are provisions in the above cited sections of the Ohio Code

that would still prevent the Socialist Labor Party from obtaining recognition as a political party. These provisions include the following:

a. At the primary election, a political party must elect a state central committee consisting of two members from each congressional district and at least one member of a county central committee from each ward or precinct in each county in Ohio, Sections 3517.02-04, Ohio Revised Code.

b. Delegates and alternates must be elected at the primary to a national convention, Section 3505.10, Ohio Revised Code. [Sixth paragraph of Statute]

c. The political party must hold a state convention composed of delegates who shall be its candidates for state offices, except judicial offices; its candidates for election to the United States Senate and House of Representatives, and to the Ohio general assembly; members of its state central and executive committees, and the chairmen of its county central and executive committees and 500 delegates apportioned by its state central committee among the several counties of the state in proportion to its party's vote for governor cast in the several counties at the last preceding general election, Section 3513.11, Ohio Revised Code.

15. Plaintiffs say that Section 3513.12, Ohio Revised Code, requires a candidate for national convention delegate or alternate to file with his declaration of candidacy and certificate a statement in writing signed by him in which he must state his first and second choice for nomination as candidate of his party for the presidency of the United States. Plaintiffs say that this statute requires a political

party to run a candidate for president of the United States; that it requires an Ohio political party to hold a national convention; that it requires each candidate for delegate or alternate to have at least two stated choices for president. It is an unwarranted and unnecessary intrusion into the internal affairs of political parties.

16. Plaintiffs say that the several statutes cited and described in this second cause of action compel third political parties to pattern their structure according to the apparatus established by the Democratic and Republican parties, which political parties are recognized by the State of Ohio; that the said apparatus is complex and involved and beyond the means or capacity of the Socialist Labor Party to erect; and that the Socialist Labor Party has a different internal structure which it should not be forced to abandon as the price of maintaining recognition as a political party, assuming it secures the necessary signatures to qualify. The effect, therefore, is to prevent the Socialist Labor Party or any other small party from obtaining the status of a recognized political party in Ohio. No justification of constitutional dimension may be shown by the State to justify these elaborate requirements. Plaintiffs and others are thereby denied the First Amendment rights of freedom of speech, assembly, and petition guaranteed them by the United States Constitution without any compelling state interest sufficient to justify such denial. The classifications established by the said statutes are frivolous, arbitrary, oppressive, discriminatory and unreasonable; and these plaintiffs are denied the Due Process and Equal Protection of Law and the Privileges and Immunities of Citizens of the United States guaranteed them by the Fourteenth Amendment of the United States Constitution.

17. Plaintiffs say that Sections 3505.10, 3513.11, 3513.12, 3517.02, 3517.03 and 3517.04, Ohio Revised Code do not fall within the scope of the State's police power and that they are not reasonably designed to accomplish any legitimate purpose or to protect any legitimate interest of the State of Ohio; and that these statutes are unconstitutional and void and should be so declared by this Court.

THIRD CAUSE OF ACTION

18. For their third cause of action plaintiffs incorporate by reference the allegations of paragraphs 1 through 17 of this Complaint and say further as follows:

19. Plaintiffs say that Section 3517.07, Ohio Revised Code, provides:

> No political party or group which advocates, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government or which carries on a program of sedition or treason by radio, speech, or press or which has in any manner any connection with any foreign government or power or which in any manner has any connection with any group or organization so connected or so advocating the overthrow, by force or violence, of our local, state, or national government or so carrying on a program of sedition or treason by radio, speech, or press shall be recognized or be given a place on the ballot in any primary or general election held in the state or in any political subdivision thereof.
>
> Any party or group desiring to have a place on the ballot shall file with the secretary of state and with the board of elections in each county in which it de-

sires to have a place on the ballot an affidavit made by not less than ten members of such party, not less than three of whom shall be executive officers thereof, under oath stating that it does not advocate, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government; that it does not carry on any program of sedition or treason by radio, speech, or press; that it has no connection with any foreign government or power; that it has no connection with any group or organization so connected or so advocating, either directly or indirectly, the overthrow by force or violence, of our local, state, or national government or so carrying on a program of sedition or treason by radio, speech, or press.

Said affidavit shall be filed not less than six nor more than nine months prior to the primary or general election in which the party or group desires to have a place on the ballot. The secretary of state shall investigate the facts appearing in the affidavit and shall within sixty days after the filing thereof find and certify whether or not this party or group is entitled under this section to have a place on the ballot.

Any qualified member of such party or group or any elector of this state may appeal from the finding of the secretary of state to the supreme court of Ohio.

This section does not apply to any political party or group which has had a place on the ballot in each national and gubernatorial election since the year 1900.

20. Plaintiffs say that this statute conditions a place on the ballot upon the execution of an unconstitutional oath; that it sweeps within its ambit conduct protected by the First Amendment of the United States Constitution; that

it is void because of its vagueness; that it illegally places the burden of proof upon those persons claiming the benefits of the statute; that it accords the Democratic and Republican party special privileges; that it creates an unreasonable, unnecessary, oppressive, arbitrary and discriminatory classification and thereby denies these plaintiffs the Due Process and Equal Protection of Law and the Privileges and Immunities of Citizens of the United States guaranteed them by the Fourteenth Amendment of the United States Constitution.

21. Plaintiffs say that unless they are granted relief by this Court, they will suffer irreparable injury. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs pray:

(1). That upon the filing of this Complaint the presiding judge of this Court call to his assistance in the hearing and determination thereof two other judges, of whom at least one shall be a circuit judge, as prescribed in 28 United States Code, Sections 2281 and 2284 and that this cause be advanced for hearing as soon as practicable.

(2) That a permanent injunction issue from such three-judge court restraining the defendants, their agents and successors from enforcing Sections 3517.01, 3505.10, 3513.11, 3517.02, 3517.03, 3517.04, 3513.12 and 3517.07, Ohio Revised Code, insofar as these sections or provisions or parts of them deprive plaintiffs of constitutionally guaranteed rights.

(3) That the Court hold and declare that Sections 3517.01, 3505.10, 3513.11, 3517.02, 3517.03, 3517.04, 3513.12 and 3517.07, Ohio Revised Code, or the per-

tinent sections or provisions or parts of them, are unconstitutional and void as being contrary to Amendments I and XIV of the United States Constitution;

(4) That the Ohio General Assembly be authorized and directed by this Court to prescribe fair and equitable guidelines for new political parties so that the plaintiff Socialist Labor Party, as a bona fide American political party, may secure official recognition as a political party in Ohio with access to the ballot for itself and its candidates.

(5) That pending the adoption of new and constitutionally acceptable requirements for new political parties by the Ohio General Assembly, this Court hold and declare that the plaintiff Socialist Labor Party is a duly qualified party entitled to participate on an equal basis with other political parties in Ohio and specifically authorized to have its name and the names of its candidates for public office printed on the Ohio ballot for the 1970 elections.

(6) That pending the hearing and determination of the prayer for permanent relief, the Court enter an interlocutory injunction restraining any of these defendants or their agents or successors from attempting in any way to enforce Sections 3517.01, 3505.10, 3513.11, 3517.02, 3517.03, 3517.04, 3513.12 and 3517.07, Ohio Revised Code, insofar as these statutes, or sections or provisions or parts of them, deprive these plaintiffs of rights guaranteed them by the First and Fourteenth Amendments of the United States Constitution; and that these defendants be specifi-

cally restrained from causing ballots to be printed for the May 5, 1970 primary elections or November 3, 1970 general elections unless such ballots contain the name of the Socialist Labor Party and its candidates for public office.

(7) And for such other and further relief as the Court may deem equitable and proper.

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Answer

Civil Action File No. 70-23

SOCIALIST LABOR PARTY, *et al.*,

Plaintiffs,

—vs.—

JAMES A. RHODES, *et al.*,

Defendants.

Specifically answering the allegations of the complaint according to the numbered paragraphs thereof, the answering defendants say:

1. Denied for lack of knowledge.

2. Denied for lack of knowledge.

3. Denied for lack of knowledge.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

9. Admitted, except allegation that for 80 years the Socialist Labor Party has been a bona fide American political party, which is denied for lack of knowledge.

10. Admitted.

11. Admitted.

12. Denied.

14. Denied, except for provisions of statutes enumerated in subparagraphs (a) through (c) of paragraph 14.

15. Admitted, except allegation that the enumerated provisions of Section 3513.12, Revised Code, are an unwarranted and unnecessary intrusion into the internal affairs of political parties.

16. Denied, except allegations that the Democratic and Republican parties are political parties recognized by the State of Ohio and that the Socialist Labor Party has a different internal structure.

17. Denied.

19. Admitted.

20. Denied.

21. Denied.

Further answering, Defendants deny each and every allegation of the complaint not heretofore specifically admitted. Wherefore, having fully answered, said Defendants pray that the complaint be dismissed.

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Defendants' Notice of Appeal to the Supreme Court of the United States

Civil Action No. 70-23

SOCIALIST LABOR PARTY, *et al.*,

Plaintiffs,

—VS.—

JAMES A. RHODES, *etc., et al.*,

Defendants.

Now come the defendants James A. Rhodes, Governor of Ohio, Ted W. Brown, Secretary of State of Ohio, and Paul W. Brown, Attorney General of Ohio, and appeal to the Supreme Court of the United States from the judgment and final order entered in this case on July 29, 1970 as amended July 31, 1970.

This appeal is taken pursuant to 28 U.S.C. Section 1253.

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Plaintiffs' Notice of Appeal to the Supreme Court of the United States

Civil Action No. 70-23

SOCIALIST LABOR PARTY, *et al.*,

Plaintiffs,

—vs.—

JAMES A. RHODES, *etc., et al.*,

Defendants.

Plaintiffs Socialist Labor Party, Ohio State Committee of the Socialist Labor Party and Joseph Pirincin hereby give notice of their appeal to the Supreme Court of the United States from that part of the judgment and final order entered in this case on July 29, 1970, as amended July 31, 1970, which upheld the constitutionality of Section 3517.07 of the Ohio Revised Code. This appeal is taken pursuant to 28 U.S.C. Section 1253.

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Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

Eastern Division

Case No. 70-24

HELEN MARCIA SWEETENHAM, 10803 Magnolia, Cleveland, Ohio, 44106,

SYDNEY ROBERT STAPLETON, 1716 East 115th Street, Cleveland, Ohio 44106,

and

JEAN TUSSEY, 3054 Euclid Heights Boulevard Cleveland Heights, Ohio 44118

Plaintiffs,

—v.—

JAMES A. RHODES, In His Representative Capacity as Governor of the State of Ohio, Governor's Mansion, Columbus, Ohio 43215,

TED W. BROWN, In His Representative Capacity as Secretary of State, State of Ohio, State House, Columbus, Ohio 43215,

PAUL W. BROWN, In His Representative Capacity as Attorney General, State of Ohio, State House, Columbus, Ohio 43215,

ROBERT HUGHES, DAN W. DUFFY, SAUL G. STILLMAN, and JOHN J. CARNEY, In Their Representative Capacities as Members of the Board of Elections, Cuyahoga County, Cleveland, Ohio,

and

JOSEPH A. CIPOLLONE, In His Representative Capacity as Director of the Board of Elections, Cuyahoga County, Cleveland, Ohio,

Defendants.

PARTIES

1. Plaintiff Helen Marcia Sweetenham is a citizen and elector of the State of Ohio. She resides in the City of Cleveland. She is a graduate of Oberlin College, Oberlin, Ohio and for the last five years has been a teacher in the East Cleveland School System. She is an independent candidate for the office of Governor of the State of Ohio in the November, 1970 general elections. She intends to be a candidate in future elections as well.

2. Plaintiff Sydney Robert Stapleton is a citizen and elector of the State of Ohio. He resides in the City of Cleveland and within the Twenty-Second Congressional District of Ohio. He will be twenty-five years of age in September, 1970, and has been a citizen of the United States for more than seven years. He is an independent candidate for the office of United States Representative from the Twenty-Second Congressional District of Ohio in the November, 1970 general elections. He intends to be a candidate in future elections as well.

3. Plaintiff Jean Tussey is a citizen and elector of the State of Ohio. She resides within the Twenty-Second Congressional District of Ohio. She is a supporter of plaintiffs Sweetenham and Stapleton and she wishes to exercise her franchise by voting for their election in the November, 1970 Elections. She sues on her own behalf and on behalf of all other supporters of plaintiffs Sweetenham and Stapleton who wish to vote for them in the November, 1970 elections; and all others similarly situated as independent voters. These persons constitute a class too numerous to bring before this court. There are common questions of law and fact affecting all members of the class and a common relief is sought. This plaintiff will adequately represent this class.

4. Plaintiffs Sweentenham and Stapleton sue on their own behalf, on behalf of all other candidates who qualify their candidacies on independent grounds, and on behalf of all other persons similarly situated. These persons are too numerous to bring before this Court. There are common questions of law and fact affecting all members of the class. A common relief is sought.

5. Defendant James A. Rhodes, as are his successors in office, is sued in his representative capacity as the duly elected, qualified and acting Governor of the State of Ohio. The Governor of Ohio is charged with the general duty of enforcing the statutes of the State of Ohio and with the particular responsibility under Section 3505.38, Ohio Revised Code of signing the certificates of Election issued by the Secretary of the State of Ohio to those persons declared duly elected to the office of the United States Representative.

6. Defendant Ted W. Brown, as are his successors in office, is sued in his representative capacity as the duly elected, qualified and acting Secretary of State of Ohio with his office and official residence in Columbus, Ohio and his county office in Cleveland, Ohio at the Cuyahoga County Board of Elections. He is the chief elections officer of Ohio under Section 3501.05, Ohio Revised Code. Section 3505.38, Ohio Revised Code requires him to issue certificates of election to those persons declared elected to office, including the office of United States Representative. Independent candidates must file their declarations of candidacy with him. Section 3513.05, Ohio Revised Code.

7. Defendant Paul W. Brown, as are his successors in office, is sued individually and in his representative capacity as the duly qualified and acting Attorney-General of the State of Ohio. He is the chief law officer for the State of Ohio. Section 109.02, Ohio Revised Code. He has certain specific duties with respect to Ohio election procedure. Sections 3505.35, 3519.01, 3513.06, and 3515.13, Ohio Revised Code.

8. Defendants Hughes, Duffy, Stillman and Carney, as are their successors in office, are sued in their representative capacities as members of the Cuyahago County Board of Elections and as agents of the Secretary of State of Ohio, for the conduct of elections in Cuyahoga County. Defendant Cipollone, as are his successors in office, is sued in his representative capacity as the duly appointed and acting Director of the Cuyahoga County Board of Elections. Independent candidates for the office of United States Representative must file their nominating petitions with the various Boards of Elections. Section 3513.05, Ohio Revised

Code. The Boards of Elections determine the sufficiency of the signatures on the petition papers not later than the 15th day of July. Section 3513.262, Ohio Revised Code.

JURISDICTION

9. This Court has jurisdiction of the parties and of the subject matter of this complaint under 42 United States Code Section 1983; 28 United States Code Section 1343(3), (4); 28 United States Code Section 2201; and Article I, Section 2; Article IV, Sections 2 and 4; and Amendments I, IX, and XIV to the United States Constitution.

CAUSE OF ACTION

10. Plaintiffs Sweetenham and Stapleton say they will cause nominating petitions to be circulated on their behalf in order to place their names on the ballot in the November, 1970 general election as independent candidates for the Offices of Governor of Ohio and United States Representative from the Twenty-Second Congressional District of Ohio.

11. Section 3513.258 Ohio Revised Code requires that independent candidates for Governor file nominating petitions containing the valid signatures of qualified electors in a number equal to "not less than four per cent of the number of electors who voted for governor, or for presidential electors, at the next preceding regular state election." (Hereafter, this is referred to as the "four per cent requirement.") Under prior Ohio statutes and until January 1, 1952, independent candidate for Governor could be nominated and placed on the ballot by obtaining signatures of one per cent of the number of electors who voted for governor at the next preceding regular state election.

for the office of governor in the district. Section 3513.258 Ohio Revised Code also requires that:

> Such petition shall contain signatures of at least two hundred electors from each of at least thirty counties in the state, and the total number of signatures of electors from any one county shall not be in excess of one fourth of the total number of signatures needed on the petition.

(Hereafter this requirement is called the "thirty county requirement.").

12. Section 3513.257 requires that independent candidates for the office of United States Representative file nominating petitions containing the valid signatures of qualified electors equal to "not less than four per cent of the number of voters who voted for governor, or presidential electors, at the next preceding election for the office of governor in the district." Under prior Ohio statutes and until 1952, such candidates could qualify by securing signatures in the amount of one per cent.

13. Both Sections 3513.257 and 3513.258 require that independent nominating petitions be filed "not later than four p.m. of the nineteenth day before the first Tuesday after the first Monday in May immediately preceding [the] general election." (Hereafter this is referred to as the "ninety day requirement.")

14. Candidates for party nomination to the office of Governor need only one thousand signatures to have their names printed on the ballot in their party primary and candidates for party nomination to the office of United States Representative may have their names printed on

the ballot in primary elections of their party by obtaining only 100 valid signatures both by virtue of Section 3513.05, Ohio Revised Code. Victors in the primary elections then have their names placed on the ballot in the general elections without further requirements.

15. Four per cent of the electors who voted for presidential electors at the next preceding regular state election is in excess of 158,388. Four per cent of the electors who voted for governor at the next preceding regular state election for governor in the Twenty-Second Congressional District is in excess of 5,572. These figures are unreasonably high, constitute invidious discriminations, deprive these plaintiffs of rights guaranteed them by the First and Fourteenth Amendments of the United States Constitution and are therefore unconstitutional.

16. The thirty county requirement in Section 3513.258, Ohio Revised Code, for the office of governor violates the equal protection clause of the Fourteenth Amendment to the United States Constitution and offends the fundamental one-man-one vote concept of representative government in the United States. A similar scheme has been held unconstitutional by the United States Supreme Court in *Moore* v. *Ogilvie*, 394 U.S. 814, (1969). The requirement here is likewise unconstitutional.

17. The ninety day requirement of Sections 3513.257 and 3513.258, Ohio Revised Code is unreasonable, capricious, arbitrary and therefore unconstitutional. It places an unnecessary burden on independent candidates thereby narrowing the number of contestants and constricting the election process. This Court has already held the requirement invalid.

18. Plaintiffs Sweetenham and Stapleton say that unless restrained by this Court, the defendants or their successors in office will deny them a place on the ballot as independent candidates in the November 1970 election unless they comply with the aforesaid unconstitutional provisions. This denial will abridge their constitutional rights in several respects; to wit:

a. Their basic constitutional rights to be candidates for an office for which they are otherwise qualified, contrary to the Fourteenth Amendment.

b. Their right to equal protection of the laws in that the requirements for independent candidates described above constitute indivious discriminations without any relationship to constitutionally justified ends, contrary to the Fourteenth Amendment.

c. Their right to due process of law in that the requirements described above are arbitrary and capricious requirements unrelated to proper governmental purposes contrary to the Fourteenth Amendment, and

d. Their right to express freely their views as candidates for public office in violation of the First Amendment of the United States Constitution.

19. Unless relief is granted by this Court, plaintiff Tussey and the class she represents will be deprived of the opportunity to vote on an equal basis for the candidates of her choice in this election. This will violate her constitutional rights in these respects:

a. By denying her the free exercise of her right to participate as a voter and citizen in the election of a Governor of Ohio and a United States representative from the 22nd Congressional District of Ohio, contrary to Article I, Section 2;

b. By denying her the privileges and immunities guaranteed citizens in the several states, contrary to Article IV, Section 2;

c. By violating the guarantee to her of a republican form of government contrary to Article IV, Section 4;

d. By denying her rights retained by the people, contrary to the Ninth Amendment;

e. By denying her Equal Protection of the Laws and Due Process of Law, contrary to the Fourteenth Amendment; and

f. By denying her the right to express her views by voting for a candidate of her choice contrary to the First Amendment to the United States Constitution.

19. Plaintiffs say that unless this Court grants them relief they will suffer irreparable injury and they have no adequate remedy at law.

WHEREFORE, plaintiffs pray:

(1) That upon the filing of this complaint the presiding judge of this Court shall call to his assistance in the hearing and determination of this cause two other judges, of whom at least one shall be a circuit judge, pursuant to 28 USC Sections 2281 and 2284.

(2) That this case be advanced for prompt hearing and determination.

(3) That pending the hearing and determination of this cause, the defendants be enjoined from denying plaintiffs Sweetenham and Stapleton ballot position solely for failure to comply with the aforesaid unconstitutional requirements.

(4) That this Court hold and declare that Section 3513.257 and Section 3513.258 of the Ohio Revised Code insofar as they contain the four per cent requirement, the ninty day requirement, and the thirty county requirement are void, invalid, and unconstitutional.

(5) That upon final hearing of this cause this Court issue a permanent injunction restraining defendants, their agents and successors from enforcing Sections 3513.257 and 3513.258 and from denying plaintiffs Sweetenham and Stapleton a place on the ballot in the November, 1970 election for failing to comply with the aforesaid unconstitutional provisions.

(6) And for such other and further relief as the Court may deem equitable and proper.

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[Verification omitted in printing.]

Answer of Defendants James A. Rhodes, Governor, State of Ohio, Ted W. Brown, Secretary of State, and Paul W. Brown, Attorney General, State of Ohio

Civil Action File No. 70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—VS.—

JAMES A. RHODES, *et al.*,

Defendants.

Specifically answering the allegations of the complaint according to the numbered paragraphs thereof, the answering defendants say:

1. Denied for lack of knowledge.

2. Denied for lack of knowledge.

3. Denied for lack of knowledge.

4. Denied for lack of knowledge.

5. Admitted.

6. Admitted, except allegation that the Secretary of State has a county office in Cleveland, Ohio, at the Cuyahoga County Board of Elections.

7. Admitted.

8. Admitted

9. Admitted.

10. Denied for lack of knowledge.

11. Admitted.

12. Admitted.

13. Denied.

14. Admitted.

15. Admitted, except allegation that these figures are unreasonably high, constitute invidious discriminations, deprive these plaintiffs of rights guaranteed them by the First and Fourteenth Amendments of the United States Constitution and are therefore unconstitutional.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

Further answering, Defendants James A. Rhodes, Governor of the State of Ohio, Ted W. Brown, Secretary of State and Paul W. Brown, Attorney General, State of Ohio deny each and every allegation of the complaint not heretofore specifically admitted. Wherefore, having fully answered, said Defendants pray that the complaint be dismissed.

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Attorneys for Defendants James A. Rhodes, Governor, State of Ohio, Ted W. Brown, Secretary of State, and Paul W. Brown, Attorney General, State of Ohio

Answer of Defendants Robert Hughes, Dan W. Duffy, Saul G. Stillman, John J. Carney, Members of the Board of Elections, Cuyahoga County, Ohio, and Joseph A. Cipollone, Director of Elections, Cuyahoga County, Ohio

Civil Action File No. 70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—vs.—

JAMES A. RHODES, *et al.*,

Defendants.

Specifically answering the allegations of the complaint according to the numbered paragraphs thereof, the answering defendants say:

1. Denied.

2. Denied for lack of knowledge, except for the fact that said plaintiff is a citizen and elector.

3. Denied for lack of knowledge, except for the fact that said plaintiff is a citizen and elector.

4. Denied for lack of knowledge.

5. Admitted.

6. Admitted, except allegation that the Secretary of State has a county office in Cleveland, Ohio at the Cuyahoga County Board of Elections.

7. Admitted.

8. Admitted.

9. Admitted.

10. Denied for lack of knowledge.

11. Admitted.

12. Admitted.

13. Denied.

14. Admitted.

15. Admitted, except allegation that these figures are unreasonably high, constitute invidious discriminations, deprive these plaintiffs of rights guaranteed them by the First and Fourteenth Amendments of the United States Constitution and are, therefore, unconstitutional.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

Further answering, Defendants Robert Hughes, Dan W. Duffy, Saul G. Stillman, John J. Carney, Members of the Board of Elections, Cuyahoga County, Ohio, and Joseph A. Cipollone, Director of Elections, Cuyahoga County, Ohio, deny each and every allegation of the Complaint not heretofore specifically admitted.

WHEREFORE, having fully answered, said answering defendants pray that the Complaint be dismissed.

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Prosecuting Attorney of
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Motion to Amend Complaint

Case No. C70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—vs.—

JAMES A. RHODES, *et al.*,

Defendants.

Plaintiffs move the Court for leave to amend their complaint on file herein in the following particular:

1. Amending numbered paragraph 13 on page 5 of the complaint so that on the third line of that paragraph the word "nineteenth" is deleted and the word "ninetieth" is substituted in its stead.

The grounds of this motion are that this will correct an inadvertent, typographical error which in no way affects the substance of the proceedings.

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241-3646
Attorney for the plaintiffs

[Affidavit of service omitted in printing.]

Order

Civil Aetion 70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—VS.—

JAMES A. RHODES, *et al.*,

Defendants.

Being fully advised, the Court determines that the May 14, 1970 motion of plaintiffs to amend their complaint is meritorious and therefore it is GRANTED.

Plaintiff's complaint is hereby AMENDED accordingly.

JOSEPH P. KINNEARY
United States District Judge

Motion for Leave to Amend Answer

Case No. C70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—vs.—

JAMES A. RHODES, *et al.*,

Defendants.

Now comes the defendants James A. Rhodes, Governor, Ted W. Brown, Secretary of State, and Paul W. Brown, Attorney General, and move the Court for leave to amend their answer by admitting the allegations of numbered paragraph 13, of the amended complaint.

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Plaintiffs' Notice of Appeal to the Supreme Court of the United States

Civil Action No. 70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—VS.—

JAMES A. RHODES, *et al.*,

Defendants.

Notice is hereby given that Helen Marcia Sweetenham, et al., the plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final order entered in this action on July 29, 1970, wherein the three-judge district court properly declared certain Ohio election laws to be violative of the United States Constitution in that they prevent independent candidates from qualifying for the ballot in general elections, but failed to properly declare another such section violative of the United States Constitution and therefore failed to order appropriate relief for plaintiffs herein.

This appeal from the part of the judgment and final order failing to declare said section unconstitutional and denying appropriate relief is taken pursuant to 28 U.S.C. §1253.

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Defendants' Notice of Appeal to the Supreme Court of the United States

Civil Action 70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—vs.—

JAMES A. RHODES, *et al.*,

Defendants.

Now come the defendants James A. Rhodes, Governor of Ohio, Ted W. Brown, Secretary of State of Ohio, and Paul W. Brown, Attorney General of Ohio, and appeal to the Supreme Court of the United States from the judgment and final order entered in this case on July 29, 1970, insofar as it holds the following to be unconstitutional: the provision of Section 3513.257, Ohio Revised Code, requiring an independent candidate for the office of district representative to Congress to file a nominating petition signed by not less than four percent of the number of electors who voted for governor, or for presidential electors, at the next preceding regular state election for the office of governor in the district; the provision of Section 3513.258, Ohio Revised Code, requiring an independent candidate for the office of governor to file a nominating petition signed by not less than four percent of the number of electors who voted for governor, or for presidential electors, at the

next preceding regular state election; and the provisions of Section 3513.258, Ohio Revised Code, that such petition contain signatures of at least two hundred electors from each of at least thirty counties in the state, and that the total number of signatures of electors from any one county shall not be in excess of one fourth of the total number of signatures required on the petition.

This appeal from part of the final order and judgment is taken pursuant to 28 U.S.C. Section 1253.

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Opinion of the United States District Court

Civil Action 70-23

SOCIALIST LABOR PARTY, *et al.*,

Plaintiffs,

—vs.—

JAMES A. RHODES, etc., *et al.*,

Defendants.

Civil Action 70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—vs.—

JAMES A. RHODES, etc., *et al.*,

Defendants.

Kinneary, District Judge. These cases were consolidated for hearing, decision and order because they involve common questions of law concerning the election laws of Ohio. The plaintiffs also seek similar relief from the alleged unconstitutionality of these laws.

The jurisdiction of the Court was invoked and arises under Title 42, United States Code, Sections 1981, 1983 and 1988, 28 United States Code, Sections 1343(3) and (4), 2201, 2202, 2281 and 2283, and Amendments I and XIV of the United States Constitution.

This three judge court was designated pursuant to the determination that the requisites for the convening of such a court were present on the faces of the complaints.

The joint hearing was held on July 16, 1970. These actions are submitted on the complaints, the answers, the plaintiffs' motions for summary judgment filed in both actions, the defendant Paul W. Brown's motion for summary judgment filed in Civil Action 70-23, the memoranda, affidavits and appendices in support of all such motions and oral arguments.

The plaintiffs allege that certain sections of the Ohio election laws governing political parties and ballot position for party and independent candidates are unconstitutional in that they violate the First and Fourteenth Amendments to the United States Constitution.

In the Socialist Labor Party case plaintiffs allege that the following statutes are unconstitutional:

1. Section 3517.01, Ohio Revised Code, which defines a political party and requires that a party either receive seven percent of the vote cast in the last preceding election for its candidate for governor or its nominees for presidential electors, or that it file with the Secretary of State a petition signed by qualified electors who represent seven percent of the total vote for governor or presidential electors at the last preceding election;

2. Sections 3517.02-3517.04, Ohio Revised Code, which specify the organizational structure of a party;

3. Section 3513.11, Ohio Revised Code, which requires that a political party elect a specified number of delegates and alternates to a state convention;

4. Sections 3505.10 and 3513.12, Ohio Revised Code, which require a state party to be part of a national political party which holds national conventions at which delegates elected in state primaries nominate presidential and vice-presidential candidates; and

5. Section 3517.07, Ohio Revised Code, which requires a political party file with county boards of election a "loyalty" oath.

The plaintiffs in the Sweetenham case allege that the following Ohio election statutes violate the First and Fourteenth Amendments to the Constitution of the United States:

1. Section 3513.25.7, Ohio Revised Code, which regulates the candidacy of independent candidates for district representative to congress; and

2. Section 3513.25.8, Ohio Revised Code, which regulates the candidacy of independent candidates for governor.

Each of these cases will be considered separately.

The Political Party Case

The facts surrounding the Socialist Labor Party's standing as a political party are not in dispute.[1] The Socialist

[1] In 1968 the United States Supreme Court held that the Socialist Labor Party was a political party entitled to ballot position in Ohio. *Williams* v. *Rhodes*, 383 U.S. 23, 27-28 (1968); *Id.* at 40 (Douglas, J., concurring). The Supreme Court refused to afford ballot position to the Socialist Labor Party through injunctive relief solely because the State of Ohio indicated it could not, at that late date, print and distribute ballots including the party's nominees for presidential electors.

Labor Party was founded as a national political party in 1890. Since 1892 it has run candidates for President of the United States in every presidential election. In 1964 it was on the ballot in sixteen states and conducted a write-in campaign in nine states; in 1968 it was on the ballot in fourteen states and conducted a write-in campaign in eight states, including Ohio.

The Ohio Socialist Labor Party has nominated and run candidates for political office in Ohio since 1895.[2] In 1968 the Socialist Labor Party's write-in candidate for President of the United States received 120 votes in Ohio. It has a membership of approximately 108 persons. Since the 1968 election the Socialist Labor Party has maintained its organizational structure and continued to participate in political activity within the State of Ohio.[3]

On April 26, 1970, the Socialist Labor Party held a convention in Cleveland, Ohio, at which it nominated John O'Neill as its candidate for United States Senator and Joseph Pirincin as its candidate for Governor of Ohio.[4] There is no evidence that any of the plaintiffs in the Socialist Labor Party case or its candidates have filed or attempted to file nominating petitions for the offices of Gov-

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[2] Plaintiff's motion for summary judgment, Appendix A.

[3] The uncontroverted affidavit of the plaintiff, Joseph Pirincin, states that the members of the Socialist Labor Party distributed over 100,000 pieces of literature in Ohio during 1969 and conducted political education classes. Further, its candidate for Mayor of Cleveland conducted a campaign during 1969 in which he appeared on numerous radio and television shows. Plaintiff's motion for summary judgment, Appendix C.

[4] Affidavit of Joseph Pirincin, May 16, 1970.

ernor of Ohio or United States Senator.[5] The Socialist Labor Party seeks ballot status for its candidates for United States Senator and Governor of Ohio.[6].

The defendant Paul Brown, as Attorney General of Ohio, moved for summary judgment, contending that the action be dismissed on the ground that the Socialist Labor Party had no bona fide candidates for United States Senator and Governor of Ohio. This contention is wholly without merit. The complaint, filed January 28, 1970, alleged the Ohio State Committee of the Socialist Labor Party nominated John O'Neill as the Party's candidate for United States Senator. However, Article 7, Section 6, of the Socialist Labor Party's by-laws provides that the state convention of the Party shall make nominations for political office. At this convention, John O'Neill was nominated for United States Senator and Joseph Pirincin for Governor of Ohio. Thus, the defendants argue that this Court could not have granted relief in January, 1970 and should not now grant relief because the defendants have made inconsistent allegations.

To maintain this action the plaintiffs were not required to hold their state convention before filing suit. The names of their candidates for Governor and United States Senator are unimportant to the consideration of their asserted constitutional right to participate as a political party in November, 1970 general election. The April 1970 state convention is evidence that the Socialist Labor Party is a

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[5] Affidavit of Ted Brown, Secretary of State of Ohio, May 5, 1970.

[6] Affidavit of Joseph Pirincin, May 16, 1970.

viable political party, not an indication that it is unworthy to participate in Ohio elections as defendants' brief suggests.

The complaint alleges that the Socialist Labor Party is an Ohio political party which intends to run candidates for the offices of United States Senator and Governor of Ohio in the November 1970 general election but, unless relief is granted, it will be denied ballot position by certain unconstitutional Ohio election laws. The complaint, therefore, alleges facts sufficient to provide a basis for this Court to grant relief. Moreover, subsequent uncontroverted affidavits identify the particular candidates of the Party who desire ballot position. The Court finds these candidates were duly nominated by the Socialist Labor Party. Therefore, the Court denies defendants' motion for summary judgment.

We come now to the merits of the Socialist Labor Party case. For the purpose of disposing of the issue before us, it is unnecessary for this Court to decide or declare anything in respect of the constitutionality of Sections 3517.02, 3517.03 and 3517.04, Ohio Revised Code, because these sections were declared unconstitutional in *Williams* v. *Rhodes, supra,* at 24-26, 34, *Id.* at 36-38 (Douglas, J. concurring), and they stand unamended today. Nonetheless, this present three judge court, at the outset, recognizes the aforedeclared unconstitutionality of these statutes, both by a prior three judge court of this district and the United States Supreme Court.

In *Williams* v. *Rhodes, supra,* the Supreme Court stated that these sections, which were included in the complex of statutes considered by the three judge court in *Socialist*

Labor Party v. *Rhodes*, 290 F. Supp. 985, 990, are "a burden on voting and associational rights which we hold is an invidious discrimination, in violation of the Equal Protection Clause." Sections 3517.02-3517.04 require a political party to use a particular form of party organization. The state may set out guidelines describing desirable, and in proper circumstances, mandatory forms of organization, but they cannot prescribe a mode of organization which denies individuals the right to associate for the advancement of political beliefs and prevents qualified voters from casting their votes effectively. *Williams* v. *Rhodes, supra* at 30.

Section 3513.11, Ohio Revised Code provides that a political party shall hold a state convention in even numbered years. It requires that all state officers, county chairmen and committee members, certain candidates, and 500 delegates attend. This statute, in effect, requires a complex state organization modeled after those of the Democratic and Republican Parties. The Supreme Court condemned such requirements in *Williams* v. *Rhodes, supra* at 25, 33.[7]

We now consider 3505.10 and 3513.12, Ohio Revised Code. Here again both of these statutes were held unconstitutional by the Supreme Court in *Williams* v. *Rhodes, supra*. After *Williams* these sections were amended.

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[7] The Court in *Williams* v. *Rhodes, supra*, considered Section 3513.12, Ohio Revised Code [and its companion Section 3505.10, Ohio Revised Code] an analogous provision to Section 3513.11 which requires that delegates and alternates must be elected to a national party convention. There are no substantial differences between the condemned organizational requirements contained in §3513.12 and those contained in §3513.11.

Section 3505.10 was amended to provide space on the ballot for the names of independent candidates, who properly filed with the Secretary of the State of Ohio, to be printed on the presidential ballot and to provide a blank space on the presidential ballot for write-in candidates. Section 3513.12 was amended to provide that candidates at large to a party's national political convention could file a group petition with the Secretary of State of Ohio, thus reducing the number of signatures required on the petition.[8] Neither of these amendments cures the constitutional infirmity condemned by the Supreme Court in *Williams* v. *Rhodes, supra.*

We hold that Sections 3505.10 and 3513.12, Ohio Revised Code, are burdensome on the right of political association and the right of qualified voters to cast their ballots effectively in that they require a national party convention and that only the names of candidates nominated at a national party convention be printed on the presidential ballot. These sections, in effect, require Ohio political parties to maintain complex national organizations and to run candidates for the office of President of the United States as a condition for having the names and party affiliation of its candidates for state office printed on the ballot. They are thus a part of a restrictive statutory scheme regulating parties and elections which are violative of the First and Fourteenth Amendments to the United States Constitution.

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[8] Previously, each person seeking nomination at large to a national party political convention had to file a petition with the Secretary of the State of Ohio.

Following the Supreme Court's decision in *Williams* v. *Rhodes*, *supra*, Section 3517.01, Ohio Revised Code, was amended to provide that:

> A political party . . . is any group which, at the last preceding regular state election, polled for its candidate for governor in the state or *nominees for presidential electors* at least seven [previously ten] per cent of the entire vote cast for *such office* or which filed with the secretary of state a petition signed by qualified electors equal in number to at least seven [previously fifteen] per cent of the total vote cast for governor *or nominees for presidential electors* at the last preceding election, declaring their intention of organizing a political party . . . and of participating in the next succeeding *primary* election *held in even numbered years, that occurs more than one hundred and twenty days after the date of filing.* [Italics indicates language included by 1969 amendment.]

The amendments to Section 3517.01, as they pertain to this case (1) reduced the number of petitioners required from fifteen to seven percent of the vote cast for governor or nominees for presidential electors at the last preceding election, (2) provided that the petitioners be a designated percentage of the vote cast for either governor or nominees for presidential electors, instead of governor and (3) increased the filing deadline for the petition from "ninety days before an election" to one hundred and twenty days before the next primary election.

The requirement that an association desiring recognition as a political party under Ohio's election laws either (1)

have polled seven percent of the vote in the last preceding election for governor or nominees for presidential electors or (2) present a petition to the Secretary of State containing the signatures of qualified voters who represent seven percent of the votes cast in the last preceding election for governor or nominees for presidential electors, is still patently burdensome.

We hold that the requirement of a petition containing signatures of qualified voters equal at least to seven percent of the total vote last cast for governor or presidential electors, which is substantially more demanding than the comparable provisions of other states,[9] is unconstitutional.

In oral argument the defendants asserted that the seven percent requirement was constitutional because it was enacted to protect the state's interest in having candidates on the ballot who (1) have made a substantial showing of voter interest at a time prior to the election and (2) are bona fide good faith candidates for elective office. Further, they assert the seven percent requirement protects the ballot and electors from frivolous or publicity seeking candidates, and, with reference to political parties, the fact of collecting signatures is an indicia of the requisite minimal political organizational ability the state may require a party to manifest. The Court does not necessarily quarrel with the defendants' contention that it may constitutionally seek to preserve these interests. Nevertheless, the manner in which they seek to do so is unconstitutional. Ohio's requirements are far too burdensome on plaintiffs' right to

[9] See Appendix D to plaintiff's memorandum in support of motion for summary judgment.

political association and the right of qualified voters to cast their ballots effectively.

Justice Harlan noted in his concurring opinion in *Williams* v. *Rhodes, supra,* at 47 n. 9, that forty-two states had petition signatory requirements of one percent or less and that forty-nine states required signatures of five per cent or less. Ohio's newly enacted seven percent requirement is thus still a much more burdensome restriction on third parties than any of the other forty-nine states impose. Rather than requiring a showing of voter interest, the seven percent requirement prohibits third parties from participating in elections.

The interests the state seeks to preserve may be protected without resort to a statutory scheme so restrictive that a small third party with a long and continuing history of political activity has no objective opportunity to participate in the elective process.

The fear of frivolous candidates and the bed sheet ballot is shown to be only meretricious by the history of Ohio's elections prior to 1952. See, *Williams* v. *Rhodes, supra* at 47 n. 9.

So far we have considered the specific sections of the Ohio election laws which the Supreme Court has held are unconstitutional as well as those sections which the Ohio Legislature amended after the decision in *Williams* v. *Rhodes, supra.* At this time we deem it appropriate to consider the overall pattern of election laws governing third parties in Ohio.

In *Williams* v. *Rhodes, supra,* at 25, the Supreme Court, after setting out the general outlines of Ohio election laws, said:

> The State of Ohio in a series of election laws has made it virtually impossible for . . . an old political party, which has a very small number of members, to be placed on the state ballot . . .

As previously noted, the Socialist Labor Party began its political activity in Ohio in 1895 and has continued active participation in Ohio politics to the present time. During the period 1895 to 1946, Socialist Labor Party candidates for various state and federal offices gained ballot position. Between 1948 and 1952 the Ohio Legislature enacted the statutory scheme which existed until 1969 when the Ohio Legislature made some pretense of conforming to the pronouncement of unconstitutionality in *Williams*.

Justice Harlan, in his concurring opinion in *Williams* v. *Rhodes, supra,* at 47, n. 9, succinctly sets out the circumstances surrounding the genisis of Ohio's restrictive election laws:

> Before [1952], independent candidates had been granted a place on the ballot if they could gather the signatures of registered voters in the number of 1% of those voting at the preceding gubernatorial election and present their petitions 60 days before the general election. The State's experience under this unexacting regime is instructive. Voting statistics compiled by Ohio's Secretary of State reveal that since 1900 no more than seven parties have appeared on the ballot to compete for a major statewide or national office. And even this number was not attained after 1908. During the last 10 years of the old regime, there are

only two third-party candidates of record. The State took effective action only after Electors pledged to Henry A. Wallace gained some 30,000 votes out of the 3,000,000 cast in 1948. Since Harry S. Truman carried the State by some 7,000 votes, the Wallace vote might well have been decisive if it had increased marginally.

The changes in Ohio election laws effectuated in the 1948-1952 period dramatically, and adversely, affected the rights of individuals to associate for the advancement of political beliefs. They also deprived qualified voters of the right to effectively cast their ballots for candidates other than those running as Democrats or Republicans. From 1952 to date there was not one independent or third party candidate on the Ohio ballot running for a state office.[10]

It is thus clear from the history of Ohio's election laws that since 1952 they have effectively precluded persons in Ohio from exercising their rights to political association outside the Democratic and Republican parties. To justify such a restriction on an important, constitutionally guaranteed right, the state must show a compelling state interest. It has not done so. Everything that has happened in the Ohio electoral process since 1952 suggests that no compelling state interest justifies the perpetuation of the present statutory entanglement.

---

[10] Plaintiffs' Motion for Summary Judgment, Appendix A. Nominees for presidential electors pledged to George Wallace were placed on the Ohio ballot as a result of *Williams* v. *Rhodes*, *supra*. There have been no other independent or third party candidates since 1952 for a national office.

The State of Ohio has an obligation to protect the right of political association guaranteed all persons through the First and Fourteenth Amendments. The state has not afforded this protection. The 1969 amendments to the election laws merely perpetuates the restrictive laws enacted between 1948 and 1952.[11] The overall effect of these laws is still to deny to plaintiffs their constitutional right of political association. Although the number of qualified voter signatures on the petition for recognition as a party was reduced from fifteen to seven percent, the requirement still constitutes a significant barrier to ballot position. More importantly, there remains the complex set of regula-

[11] Section 3517.01, Ohio Revised Code, was amended to reduce the signature requirement on petitions for third party ballot recognition from fifteen percent to seven percent of the voters for governor or nominees for presidential electors. Section 3517.01 changed the filing date from ninety days before the election to one hundred and twenty days before the primary election preceding the general election. In addition, Section 3517.013 was added permitting persons previously affiliated with a recognized political party to be candidates of a newly recognized party.

Section 3517.014 exempts candidates of newly-formed parties from the first primary following recognition of the party. Sections 3517.015 and 3517.016 permit any qualified voter to sign the petition for party recognition and vote in the first party primary without regard to previous political affiliation.

With the exception of the seven percent requirement and the filing date for the petition these changes are ameliorative of the prior restrictive election laws. Section 3505.10 was amended in conformity with *Williams* to permit write-in candidates on the presidential ballot.

However, none of the other laws noted in *Williams* to be restrictive were amended to comply with the clear meaning of the Supreme Court's opinion. Sections 3517.02 through 3517.04, Ohio Revised Code, remain law. Section 3505.10 still requires a national convention to choose a presidential candidate, although new parties are apparently exempted from the first primary following their recognition. Section 3517.014, Ohio Revised Code.

tions governing party organization explicitly condemned in *Williams* by the Supreme Court.

Rather than assuring the constitutional right of political association, the Ohio election laws make it virtually impossible for third party candidates and independent candidates to gain ballot position. This established fact cannot be turned aside or reasoned away.

Plaintiffs' third cause of action alleges that Section 3517.07, Ohio Revised Code, abridges their right to political association. Section 3517.07 provides in relevant part:

> Any party or group desiring to have a place on the ballot shall file with the Secretary of State and with the board of elections in each county in which it desires to have a place on the ballot an affidavit . . . under oath stating that it does not advocate, either directly or indirectly, the overthrow, by force or violence, of our local, state or national government; that it does not carry on any program of sedition or treason by radio, speech or press; that it has no connection with any foreign government or power; that it has no connection with any group or organization so connected or so advocating, either directly or indirectly, the overthrow, by force or violence, of our local, state or national government or so carrying on a program of sedition or treason by radio, speech, or press.
>
> . . .
>
> This section does not apply to any political party or group which has had a place on the ballot in each national and gubernatorial election since the year 1900.

Plaintiffs contend that Section 3517.07 (1) bars from the ballot political parties which abstractly advocate the overthrow of the government by force and violence, (2) abridges associational rights, (3) is overly broad, (4) is impermissibly vague, (5) violates due process because it places the burden of proving loyalty on the political party and (6) violates the Equal Protection Clause by excepting the Democratic and Republican Parties from its ambit.

It is well established that loyalty oaths which fail to distinguish between abstract advocacy and advocacy directed at promoting unlawful action must be stricken as unwarranted invasions of free speech. *Keyishian* v. *Board of Regents*, 385 U.S. 589, 599-600 (1960); *Brandenburg* v. *Ohio*, 395 U.S. 444, 447-448 (1969).

Section 3517.07 is overly broad on its face in that it attempts to prohibit mere advocacy. However, the Ohio Supreme Court, in *State ex rel. Beck* v. *Hummel*, 150 Ohio St. 127 (1948) construed the section narrowly. That Court recognized a distinction between attempt and mere advocacy:

> One who would *attempt* by any means to overthrow the government by force would be a traitor and there would be justification for dealing with him in accordance with the enormity of his offense. The government has the inherent power to defend and protect itself.
>
> To advocate an entire [and permissible] change in our form of government is an entirely different matter. *State ex rel. Beck* v. *Hummel*, *supra* at 137.

The Ohio Supreme Court went on to hold that the mere fact that certain members of the Progressive Party had

been or were members of the Communist Party did not constitute a connection with any group or organization advocating the overthrow of the government within the meaning of the Ohio loyalty oath law. *Id.* at 258.

The United States Supreme Court in *Gerende v. Board of Supervisors*, 341 U.S. 56 (1951) recognized the constitutionality of an oath requirement for candidates for elective office, if the oath is limited to the assertion that the candidate is:

> not a person who is engaged in one way or another in the *attempt* to overthrow the government by *force or violence*, and that he is not knowingly a member of an organization engaged in such an attempt. [Emphasis added.]

The *Gerende* decision has been cited approvingly by the Supreme Court on many occasions. *See, e.g., Whitehill v. Elkins*, 389 U.S. 54, 57-58 (1967); *Speiser v. Randall*, 357 U.S. 513, 527 (1958).

The Court holds that Section 3517.07, Ohio Revised Code, narrowly construed to require an oath that (1) the party is not engaged in an attempt to overthrow the government by force or violence, (2) the party does not carry on a program of sedition or treason as defined by the criminal law and (3) the party is not knowingly associated with a group attempting to overthrow the government by force or violence, is constitutional.

The Independent Candidates Case

Plaintiff Marcia Sweetenham is an independent candidate for Governor of Ohio in the November 1970 general

election.[11] Plaintiff Robert Stapleton is an independent candidate for Congressman from Ohio's Twenty-Second Congressional District in the November 1970 general election.[12] Plaintiff Jean Tussey is a citizen and registered voter who supports the candidacies of plaintiffs Sweetenham and Stapleton.

Plaintiffs assert the unconstitutionality of that part of Section 3513.258, Ohio Revised Code, which requires independent candidates for statewide office file with the secretary of state a petition including the signatures of at least two hundred electors from each of at least thirty counties, and limits the total number of signatures obtained from qualified voters in any one county to no more than one fourth of those needed on the nominating petition.

Ohio has eighty-eight counties. In the 1960 census Ohio had a total population of 9,705,336 persons. Over two-thirds of Ohio's population lives in the sixteen largest counties. Over fifty percent of Ohio's population lives in the seven largest counties.

The thirty county requirement results in a marked dilution of the voting strength of urban voters as opposed to rural voters, violating the principle of one man, one vote. *See, Gray* v. *Sanders,* 372 U.S. 368 (1963); *Reynolds* v. *Sims,* 377 U.S. 533 (1964). Under Section 3513.258 the fifty percent of Ohio's qualified voters living in its seven largest counties are disabled from nominating independent candidates for state wide office.

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[11] Affidavit of Marcia Sweetenham.

[12] *Ibid.*

In *Moore* v. *Ogilvie*, 394 U.S. 814 (1969) the Supreme Court struck down an Illinois statute which required independent candidates for presidential electors to secure two hundred signatures in each of fifty counties.[13]

The state has presented no compelling reason for these discriminatory restrictions on the right to nominate independent candidates for state office. This Court determines there is no such compelling state interest. As the Supreme Court said in *Moore* v. *Ogilvie, supra* at 818-819:

> It is no answer to the argument under the Equal Protection Clause that this law was designed to require state support for a new political party rather than support from a few localities. This law applies a rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional theme of equality among citizens in the exercise of their political rights. *The idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government.* [Emphasis added.]

The Court further holds that the provisions of Section 3513.258, Ohio Revised Code, which require a petition to contain signatures of at least 200 qualified voters from each of thirty counties is unconstitutional in that it is violative of the principle of one man, one vote. *Moore* v. *Ogilvie, supra; Socialist Workers Party* v. *Hare*, 304 F. Supp. 534 (E.D. Mich. 1969).

---

[13] Illinois has 102 counties.

The requirement that no more than one fourth of the signatures necessary be obtained from any one county is similarly unconstitutional. It reduces the voting strength of voters located in Ohio's largest counties. There is no compelling state interest in limiting the number of qualified voters in any one county who may sign a candidate's petition. Each voter is entitled to the full weight of his vote. *Moore* v. *Ogilvie, supra.*

The state cannot use county lines as a determinant of which voters may exercise rights associated with the franchise.

> Citizens, not history or economic interests, cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal-population principle. Again, people, not land or trees or pastures, vote. *Reynolds* v. *Sims,* 377 U.S. 553, 580 (1964).

Plaintiffs allege that the part of Section 3513.257, Ohio Revised Code, which requires an independent candidate for the office of representative to Congress to file a nominating petition signed by four percent of the number of electors who voted for governor or presidential electors in the district at the last preceding regular state election and the similar part of Section 3513.258 which requires signatures of qualified voters representing four percent of the total state vote for governor or nominees for presidential elector in the last preceding election are unconstitutional.

This same requirement for independent candidates was discussed in *Socialist Labor Party* v. *Rhodes, supra* at 994 (Kinneary, J. concurring in part and dissenting in part):

> During the fifteen year period prior to 1947, participation in the electoral process by independently nominated candidates was neither substantial *nor* disruptive. Nevertheless in that year the Ohio General Assembly began a series of changes in the election laws which ultimately resulted in the complete elimination of independent and third party voters and candidates from Ohio's political arena.

Since that opinion the Ohio Legislature has reduced the petition signature requirement for independent candidates from seven to four percent. However, the state has shown no compelling state interest in raising the one percent requirement to seven percent or to the present four percent, nor has it demonstrated a compelling reason for the four percent requirement.

The state contends, properly, that it has an interest in a nominating procedure for independent candidates which requires a substantial showing of voter interest evidenced prior to the election. Further, it has a right to keep frivolous candidates off the ballot and wherever constitutionally possible to avoid the use of the "bed sheet" ballot which may result in voter confusion. The problem with these arguments is that when Ohio had a one percent signature requirement all of these conditions were satisfied. See, *Williams* v. *Rhodes*, 393 U.S. 23, 47 n. 9 (1968) (Harlan, J., concurring). The state has the burden of justifying the four percent requirement and the Court holds that it has failed to do so.

In addition to denying the right of association and the right of qualified voters to cast their ballots effectively,

the four percent requirement invidiously discriminates between independent and party candidates. Independent candidates for Congress in plaintiff Stapleton's district must obtain at least 5,572 valid signatures. But party candidates need obtain only one hundred signatures. Independent candidates for state wide office must obtain at least 158,388 valid signatures, whereas party candidates need obtain only 1,000 signatures. The state has not demonstrated a compelling interest supporting the differential treatment afforded independent and party candidates. Mere membership in a political party does not assure that a candidate has a substantial electoral support. A candidate collecting 100 or 1,000 signatures may well be running without any party or electoral support. If it is assumed that party membership of a candidate gives the state some intangible guarantee of worthiness for ballot position, this consideration does not merit such disproportionate requirements for signatures on a nominating petition.

Plaintiffs allege that those parts of Sections 3513.257 and 3513.258, Ohio Revised Code, which require nominating petitions to be filed "not later than 4:00 P.M. of the ninetieth day before the first Tuesday after the first Monday in May immediately preceding [the] general election" are unconstitutional.

The state has an interest in having persons who otherwise qualify for ballot position officially become candidates at a designated time prior to an election. In addition, the state may reasonably require that all persons seeking elective office become officially declared candidates on or before a certain date preceding an election. One may not

play dog in a political manger by withholding his determination of candidacy until after party candidates are chosen by the primary process.

The plaintiffs Sweetenham and Stapleton herein had not taken steps to become candidates prior to the May 1970 primary election. Plaintiff Sweetenham had obtained 1,600 signatures on her nominating petition by June 29, 1970.[14] Plaintiff Stapleton had obtained 2,455 signatures on his nominating petition by June 29, 1970.[15] Neither plaintiff has filed or tendered a nominating petition with the designate state or county official. Candidates for parties which participated in the primary election were chosen in the May 1970 primary election. The Socialist Labor Party candidates whom this Court has held are entitled to ballot position were chosen on April 26, 1970.[16]

The Court holds that plaintiffs Sweetenham and Stapleton, who did not officially declare their candidacy at or before the time Ohio requires political parties to choose their nominees, are not entitled to ballot position.

THEREFORE, THE COURT DENIES plaintiffs' prayer for injunctive relief placing them on the ballot.

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[14] Affidavit of Helen Marcia Sweetenham.

[15] Affidavit of Sydney Robert Stapleton.

[16] Affidavit of Joseph Pirincin, May 16, 1970.

Order

It is hereby ordered:

1. That the defendants are permanently enjoined from enforcing Sections 3517.01, 3505.10, 3513.11, 3517.02, 3517.03, 3517.04 and 3513.12, Ohio Revised Code, insofar as these sections or provisions or parts thereof deprive plaintiffs of constitutionally guaranteed rights as adjudged in this Opinion;

2. That the Socialist Labor Party by name, and its candidate for Governor, John O'Neill, and its candidate for United States Senator, Joseph Pirincin, all be placed upon the ballot for the 1970 Ohio general election;

3. That the defendants are permanently enjoined from enforcing those portions of Sections 3513.257 and 3513.258, Ohio Revised Code, which deprive plaintiffs of constitutionally guaranteed rights as adjudged in this Opinion.

John W. Peck
Judge, United States Court of Appeals
for the Sixth Circuit

Carl A. Weinman
Chief Judge, United States District Court,
Southern District of Ohio

Joseph P. Kinneary
Judge, United States District Court
Southern District of Ohio

Amended Order

Civil Action No. 70-23

SOCIALIST LABOR PARTY, *et al.*,

Plaintiffs,

—VS.—

JAMES A. RHODES, etc., *et al.*,

Defendants.

Civil Action No. 70-24

HELEN MARCIA SWEETENHAM, *et al.*,

Plaintiffs,

—VS.—

JAMES A. RHODES, etc., *et al.*,

Defendants.

This matter is before the Court on its own motion under the provisions of Rule 60(a), Fed. R. Civ. P. to amend its Order entered July 29, 1970.

Through clerical error, paragraph two of the Court's Order of July 29, 1970 reads as follows:

> 2. That the Socialist Labor Party by name, and its candidate for Governor, John O'Neill, and its candidate for United States Senator, Joseph Pirincin, all be placed upon the ballot for the 1970 Ohio general election;

The Socialist Labor Party's candidate for Governor is Joseph Pirincin; its candidate for United States Senator is John O'Neill. Affidavit of Joseph Pirincin, May 16, 1970.

ACCORDINGLY, IT IS HEREBY ORDERED THAT the Court's Order of July 29, 1970 be amended to read as follows:

> 2. That the Socialist Labor Party by name, and its candidate for Governor, Joseph Pirincin, and its candidate for United States Senator, John O'Neill, all be placed upon the ballot for the 1970 Ohio general election;

JOHN W. PECK
Judge, United States Court of Appeals
for the Sixth Circuit

CARL A. WEINMAN
Chief Judge, United States District Court,
Southern District of Ohio

JOSEPH P. KINNEARY
Judge, United States District Court
Southern District of Ohio

...RARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
OCT 7 1970
E. ROBERT SEAVER, CLERK

70-21

In the Supreme Court of the United States

No. 811.

OCTOBER TERM, 1970.

SOCIALIST LABOR PARTY, *et al.*,

Appellants,

vs.

JAMES A. RHODES, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

JURISDICTIONAL STATEMENT.

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In the Supreme Court of the United States

No. _____.

OCTOBER TERM, 1970.

SOCIALIST LABOR PARTY, *et al.*,

Appellants,

vs.

JAMES A. RHODES, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION.

JURISDICTIONAL STATEMENT.

Appellants appeal from that part of the judgment of the three-judge United States District Court for the Southern District of Ohio, Eastern Division, upholding the constitutionality of Ohio's election loyalty oath, Section 3517.07, Ohio Revised Code, and denying appellants declaratory and injunctive relief.

OPINIONS BELOW.

The District Court's opinion, as yet unreported, was rendered on July 29, 1970 and is appended in the Jurisdictional Statement in *Sweetenham v. Rhodes,* Oct. Term 1970, previously filed in this Court.

JURISDICTION.

This case involves a challenge to the constitutionality of several Ohio election statutes. The action was filed pursuant to 42 U.S.C. 1981, 1983 and 1988; 28 U.S.C. 1343 (3) and (4); 28 U.S.C. 2201 and 2202; and Amendments I and XIV of the United States Constitution. The jurisdiction of the Supreme Court of the United States to review this judgment on appeal is conferred by 28 U.S.C. Sections 1253 and 2101. The District Court's order was entered on July 29, 1970. Of the three causes of action contained in the Complaint, the District Court found for appellants on the first two and for appellees on the third. Partial declaratory and injunctive relief was accorded appellants. Appellees' notice of appeal from the judgment on the first two causes of action was filed on August 17, 1970. Appellants' appeal from the judgment rendered against them on the third cause of action was filed on the same date.

Sustaining this Court's jurisdiction in the subject case is *Williams v. Rhodes*, 393 U.S. 23 (1968).

STATUTE INVOLVED.

To be decided on this appeal is the constitutionality of Ohio's election loyalty oath, Section 3517.07, Ohio Revised Code, which provides:

> No political party or group which advocates, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government or which carries on a program of sedition or treason by radio, speech, or press or which has in any manner any connection with any foreign government or power or which in any manner has any connection with any group or organization so connected or so advocating the overthrow, by force or violence, of our local, state, or national government or so carrying on

a program of sedition or treason by radio, speech, or press shall be recognized or be given a place on the ballot in any primary or general election held in the state or in any political subdivision thereof.

Any party or group desiring to have a place on the ballot shall file with the secretary of state and with the board of elections in each county in which it desires to have a place on the ballot an affidavit made by not less than ten members of such party, not less than three of whom shall be executive officers thereof, under oath stating that it does not advocate, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government; that it does not carry on any program of sedition or treason by radio, speech, or press; that it has no connection with any foreign government or power; that it has no connection with any group or organization so connected or so advocating, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government or so carrying on a program of sedition or treason by radio, speech, or press.

Said affidavit shall be filed not less than six nor more than nine months prior to the primary or general election in which the party or group desires to have a place on the ballot. The secretary of state shall investigate the facts appearing in the affidavit and shall within sixty days after the filing thereof find and certify whether or not this party or group is entitled under this section to have a place on the ballot.

Any qualified member of such party or group or any elector of this state may appeal from the finding of the secretary of state to the supreme court of Ohio.

This section does not apply to any political party or group which has had a place on the ballot in each national and gubernatorial election since the year 1900.

QUESTIONS PRESENTED.

1. Does Ohio's election loyalty oath statute violate the First Amendment of the United States Constitution?

2. Does Ohio's election loyalty oath statute violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution?

3. Does Ohio's election loyalty oath statute violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution?

STATEMENT OF THE CASE.

The Socialist Labor Party has an old and well-established branch in the State of Ohio which has nominated and run candidates for office since 1895. In 1968 the Party's write-in candidate for President of the United States received 120 votes in Ohio. In 1969 the Party ran a candidate for Mayor of Cleveland and in 1970 its state convention nominated candidates for United States Senate and for governor.

The Socialist Labor Party filed the subject action on January 28, 1970, seeking ballot status for its candidates in the November, 1970 general election and recognition of the party for future Ohio elections. The Complaint asserted three causes of action all challenging the constitutionality of Ohio election statutes affecting the formation, structure and recognition of political parties. The first cause of action places in issue the seven percent requirement for new political parties;[1] the second complains of a

---

[1] Ohio had formerly required a new political party seeking official ballot status to collect signatures from electors equal in number to at least 15% of those voting for governor in the preceding gubernatorial election. This provision was voided by this Court on October 15, 1968 in *Williams v. Rhodes, supra.* The Ohio legislature then adopted the 7% requirement.

series of statutes, which, *inter alia,* require Ohio political parties to have a highly developed and massive statewide apparatus with hundreds of officials and at least 1200 members. (See footnote 1 to *Williams v. Rhodes,* 393 U.S. 23 at 25); and the third seeks to invalidate Ohio's election loyalty oath.

The case was heard by a three-judge court following the filing of motions for summary judgment. The Court rendered judgment for plaintiffs on their first two causes of action and ordered the names of plaintiffs' candidates for governor and United States senator placed on the Ohio ballot for the November, 1970, general election. The constitutionality of the loyalty oath, however, was upheld. Plaintiffs had not signed the loyalty oath; nor did the Court require them to sign it as a condition for being on the ballot. However, the Court refused to grant a permanent injunction refraining the defendants from enforcing the oath requirement as prayed for in paragraph (2) of the Complaint.

In upholding the loyalty oath, the District Court noted:

> Plaintiffs contend that Section 3517.07 (1) bars from the ballot political parties which abstractly advocate the overthrow of the government by force and violence, (2) abridges associational rights, (3) is overly broad, (4) is impermissibly vague, (5) violates due process because it places the burden of proving loyalty on the political party and (6) violates the Equal Protection Clause by excepting the Democratic and Republican Parties from its ambit.

The Court dealt only with the first and third of these contentions. It acknowledged that "Section 3517.07 is overly broad on its face in that it attempts to prohibit mere advocacy." (Appendix p. 23) However, based upon its interpretation of *Beck v. Hummel,* 150 Ohio St. 127, 80

N.E. 2d 899 (1948), the Court determined that the statute had been narrowly construed so as to pass constitutional muster. Invoking *Gerende v. Board of Supervisors*, 341 U.S. 56 (1951) as controlling authority, the Court concluded

> that Section 3517.07, Ohio Revised Code, narrowly construed to require an oath that (1) the party is not engaged in an attempt to overthrow the government by force or violence, (2) the party does not carry on a program of sedition or treason as defined by the criminal law and (3) the party is not knowingly associated with a group attempting to overthrow the government by force or violence, is constitutional.

THE QUESTIONS ARE SUBSTANTIAL.

This Court has repeatedly given full plenary consideration to loyalty oath cases because the questions posed by them are of substantial constitutional concern. See *Keyishian v. Board of Regents*, 385 U.S. 589 (1967); *Elfbrandt v. Russell*, 384 U.S. 11 (1966); *Cramp v. Board of Public Instruction*, 368 U.S. 278 (1961); *Baggett v. Bullitt*, 377 U.S. 360 (1964); *Whitehill v. Elkins*, 389 U.S. 54 (1967). Where imposed as a condition for a political party to secure a place on the ballot, a loyalty oath can cripple or even destroy the process of free elections. Since any infringement on the right to run for office or to cast a ballot is of grave constitutional concern, Ohio's election loyalty oath statute—which has already been invoked once by the Ohio Secretary of State to deny a political group a place on the ballot[2]—warrants the closest judicial scrutiny.

---

[2] The Secretary's ruling that the Progressive Party had Communist links disqualifying it from the ballot under the loyalty oath statute was reversed on appeal to the Ohio Supreme Court. See *Beck v. Hummel*, 150 Ohio St. 127, 80 N.E.2d 899 (1948).

I.

Ohio's Election Loyalty Oath Raises Substantial First Amendment Questions Because It Is Overly Broad, Prohibits Abstract Advocacy of the Overthrow of the Government by Force and Violence, and Interferes with Associational Rights.

The mere reading of Section 3517.07, Ohio Revised Code, is sufficient to indict it on First Amendment grounds. One phrase of the statute follows another in a seemingly endless labyrinth of prohibitions. Among the statute's several fatal flaws, it bars protected forms of advocacy. See *Keyishian v. Board of Regents, supra.* The proscriptions on advocacy contained in the oath are nowhere confined to the strict limits established by this Court in *Brandenburg v. Ohio,* 395 U.S. 444 (1969).

The District Court seeks to save the statute by construing it narrowly. It claims that the Ohio Supreme Court's interpretation of the law in *Beck v. Hummel,* 150 Ohio St. 127, 137, 80 N.E.2d 899, 904 (1948) is controlling. But the constitutionality of the oath was *not* placed in issue in the *Beck* case. Nor did the Ohio Supreme Court specifically interpret or limit the reach of its language. While federal courts can only take the statute as the state courts read it, *Terminiello v. Chicago,* 337 U.S. 1, 4 (1949), they cannot rewrite the statute to rid it of its infirmities.

Even as interpreted by the District Court, the loyalty oath statute is unconstitutional. While refining its prohibitions and delimiting its sweep the Court still approves unconstitutional curbs on associational rights because it holds that an oath may be required to show that "the party is not knowingly associated with a group attempting to overthrow the government by force or violence." Since "quasi-political parties or other groups * * * may em-

brace both legal and illegal aims," *Scales v. United States,* 367 U.S. 203, 229 (1961), a "blanket prohibition of association with a group having both legal and illegal aims" poses "a real danger that legitimate political expression or association would be impaired," *id.* and is unconstitutional. See also *Elfbrandt v. Russell,* 384 U.S. 11, 15-17 (1966).

Gerende v. Board of Supervisors, supra, is hardly authority for saving the Ohio oath, as the District Court suggests. The Gerende oath, as approved by this Court, does not invade associational rights; nor does it purport to bar groups carrying on programs of "sedition" or "treason." (See discussion of due process issue, *infra.*)

II.

Ohio's Election Loyalty Oath Statute Raises Substantial Due Process Questions Because (a) It Is Void for Vagueness and (b) It Places the Burden on the Political Party to Prove Its Loyalty Rather Than on the State to Prove the Party's Disloyalty.

(a) The Statute Violates Due Process Rights Because Its Language Is Impermissibly Vague.

Stricter standards of permissible statutory vagueness are applied to statutes having a potentially inhibiting effect upon rights guaranteed by the First Amendment of the United States Constitution. *Smith v. California,* 361 U.S. 147 (1959); *Cramp v. Board of Public Instruction, supra; Winters v. New York,* 333 U.S. 507 (1948); *Thornhill v. Alabama,* 310 U.S. 88 (1940). The Ohio statute is cluttered with vague language mandating its invalidation.

The words "sedition or treason," for example, appear in the statute no less than four times. But the words are

nowhere defined or explained.[3] In *Keyishian v. Board of Regents*, 385 U.S. 589, 598, (1967) this Court noted that:

> dangers fatal to First Amendment freedoms inhere in the word "seditions." See *New York Times Co. v. Sullivan*, 376 U.S. 254, 273-276. And the word "treasonable," if left undefined, is no less dangerously uncertain.

This Court unanimously struck a Florida loyalty oath in *Cramp v. Board of Public Instruction, supra*, for undue vagueness and uncertainty; yet that oath was far less ambiguous, less prolix, and more limited in scope than the one challenged here.

(b) The Statute Violates Due Process Rights by Placing the Burden on the Political Party to Prove Its Loyalty Rather Than on the State to Prove the Party's Disloyalty.

The procedure prescribed by 3517.07, Ohio Revised Code, is that the Secretary of State first investigates the new political party which has filed loyalty oath affidavits and if he deems the Party to be un-American or subversive, then he bars the Party from the ballot. The Party may appeal the Secretary's decision to the Ohio Supreme Court. This very scheme was struck down in *Speiser v. Randall*, 357 U.S. 513 (1958). The District Court acknowledges appellants' contention that the loyalty oath statute "violates due process because it places the burden of proving loyalty on the political party." Yet the Court ignores the argument entirely and makes no attempt to distinguish this case from *Speiser v. Randall, supra*.

Of further concern is the manner in which the Secre-

---

[3] The District Court's opinion states that "sedition" shall be limited as defined by the state's criminal law. Appendix, p. 24, appended in Jurisdictional Statement, *Sweetenham v. Rhodes*, The only difficulty with this is that Ohio's criminal code nowhere defines "sedition."

tary of State makes his determination as to the Party's loyalty. As revealed in *Beck v. Hummel, supra,* the Party is denied the right to a hearing, to cross-examine witnesses and to state its own case. The Ohio Supreme Court put its seal of approval on such a system:

> We do not hold that in the present case the secretary was obligated to have a hearing or to give opportunity to the Wallace committee to answer any charges made against its group or to cross-examine any witnesses. * * *
>
> *State ex rel. Beck v. Hummel,* 150 Ohio St. 127, 80 N.E.2d 899, 905 (1948).

Since the District Court adopts and approves what it claims is the Ohio Supreme Court's interpretation of the loyalty oath statute, its decision means that a procedure blatantly violative of elemental due process requirements has now received federal judicial sanction.

III.

Ohio's Election Loyalty Oath Raises Substantial Equal Protection Questions Because the Democratic and Republican Parties Are Exempted From Having to Sign the Oath.

Under the provisions of the election loyalty oath statute, any political party whose origins in Ohio dated from a period subsequent to 1900 would have to file loyalty oath affidavits prior to every election. No such obligation would ever devolve upon the pre-1900 parties, i.e., the Democrats and Republicans.

As abhorrent to constitutional standards as the oath requirement is per se, the exemption above renders it particularly infirm. The double standard favoring the Democratic and Republican political parties, so pervasive

throughout the Ohio election code, is once again in evidence. The dominant two political parties may investigate, but not be investigated. Because of their longevity as Ohio political parties, they are immune from suspicion of "disloyalty" but they have license to suspect others and to bar them from the ballot. The exemption of the two major parties is absolutely untenable and indefensible and creates a classification bearing no reasonable relationship to any legitimate legislative objective. The classification is arbitrary, capricious and invidiously discriminatory against appellants and other third political parties. Since the rest of the statute is so pervaded with constitutional evil, the concluding section containing the exemption at least contributes an appropriate consistency.

One of the devices to restrict the right of suffrage that has been struck down is the so-called "grandfather clause." *Guinn v. United States,* 238 U.S. 347 (1915); *Lane v. Wilson,* 307 U.S. 268 (1939). Its resemblance to the exemption clause in Section 3517.07, Ohio Revised Code, is extraordinary. The grandfather clause was designed to limit the right to vote to those with the right paternity; the aim was to prevent Negroes from voting. The exemption clause in Section 3517.07, Ohio Revised Code is not even a sophisticated variation of this device. It is plainly and simply an attempt to deny the right to vote and the right to participate in the electoral process to certain minority groups.

CONCLUSION.

Because it violates free speech and associational rights; because it is overly broad in scope; because it is vague and uncertain; because it is procedurally infirm; and because it denies equal protection of the law, Ohio's election loyalty oath statute, Section 3517.07, Ohio Revised Code, should be declared unconstitutional and void. Substantial issues are posited by this challenge to the statute and the Court is respectfully urged to allow full plenary review to resolve those issues.

Respectfully submitted,

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Counsel for Appellants.

Of Counsel:
JERRY GORDON.

...ARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JAN 11 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

No. 854 70-21

October Term, 1970

SOCIALIST LABOR PARTY, et al.,
Appellants,

vs.

JAMES A. RHODES, et al.,
Appellees.

On Appeal From the United States District Court
For the Southern District of Ohio, Eastern Division

MOTION TO DISMISS
AND BRIEF IN SUPPORT THEREOF

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IN THE

Supreme Court of the United States

October Term, 1970

No. 814

SOCIALIST LABOR PARTY, et al.,
Appellants,

vs.

JAMES A. RHODES, et al.,
Appellees.

On Appeal From the United States District Court For the Southern District of Ohio, Eastern Division

MOTION TO DISMISS

Now come Appellees, through Paul W. Brown, Attorney General, and move the Court to dismiss this appeal on the basis that it presents no constitutional question.

PAUL W. BROWN
Attnorey General

ROBERT D. MACKLIN
Chief Counsel

Attorneys for Appellees.

IN THE

Supreme Court of the United States

No. 814

October Term, 1970

SOCIALIST LABOR PARTY, et al.,
Appellants,

vs.

JAMES A. RHODES, et al.,
Appellees.

On Appeal From the United States District Court For the Southern District of Ohio, Eastern Division

BRIEF IN SUPPORT OF MOTION TO DISMISS

At issue in this appeal is the following pertinent part of Section 3517.07, Ohio Revised Code:

> "Any party or group desiring to have a place on the ballot shall file with the Secretary of State and with the board of elections in each county in which it desires to have a place on the ballot an affidavit * * * under oath stating that it does not advocate, either directly or indirectly, the overthrow, by force or violence, of our local, state or national government; that it does not carry on any program of sedition or treason by radio, speech or press; that it has no connection with any foreign government or power; that it has no connection with any group or organization so connected or so advocating, either

directly or indirectly, the overthrow, by force or violence, of our local, state or national government or so carrying on a program of sedition or treason by radio, speech, or press.

"* * * * * * * * *

"This section does not apply to any political party or group which has had a place on the ballot in each national and gubernatorial election since the year 1900."

The District Court held that this statute is overly broad on its face in that it attempts to prohibit mere advocacy. However, in reliance on *State ex rel. Beck* v. *Hummel,* 150 Ohio St. 127 (1948), which construed the section narrowly, the Court held that, as so construed, the statute is constitutional, and requires an oath that (1) the party is not engaged in an attempt to overthrow the government by force or violence, (2) the party does not carry on a program of sedition or treason as defined by the criminal law and (3) the party is not knowingly associated with a group attempting to overthrow the government by force or violence.

This Court has upheld oath requirements for candidates for elective office. *Gerende* v. *Board of Supervisors,* 341 U.S. 56, 71 S. Ct. 565, 95 L. Ed. 745 (1951). This case, as the District Court noted, has been cited with approval by this Court on several occasions. Further, the Court has indicated that it will accept the construction given to a state loyalty oath statute by the highest state court. *Baggett* v. *Bullitt,* 377 U.S. 360, 84 S. Ct. 1316, 12 L.Ed. 2d 377 (1964). Since the *Hummel* case, *supra,* clearly distinguished between mere advocacy and attempt, which is the dividing line in judging the validity of loyalty oaths, it follows that the Supreme Court of Ohio has given the statute a constitutional interpretation,

which this Court can accept. It further follows that this appeal does not present a constitutional question.

CONCLUSION

For the foregoing reasons, this appeal should be dismissed.

Respectfully submitted,

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SUPREME COURT, U. S.
Supreme Court, U.S.
FILED
JUL 9 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

~~No. 814~~ 70-21

October Term, 1970

SOCIALIST LABOR PARTY, et al.,
Appellants,

vs.

JOHN J. GILLIGAN, GOVERNOR,
STATE OF OHIO, et al.,
Appellees.

~~No. 1104~~

October Term, 1970 70-56

HELEN A. SWEETENHAM, et al.,
Appellants,

vs.

JOHN J. GILLIGAN, GOVERNOR,
STATE OF OHIO, et al.,
Appellees.

On Appeal From the United States District Court For the Southern District of Ohio, Eastern Division

BRIEF

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IN THE

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No. 814

October Term, 1970

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No. 1104

October Term, 1970

HELEN A. SWEETENHAM, et al.,
Appellants,

vs.

JOHN J. GILLIGAN, GOVERNOR,
STATE OF OHIO, et al.,
Appellees.

On Appeal From the United States District Court For the Southern District of Ohio, Eastern Division

JURISDICTION

These cases, brought for declaratory injunctive relief, involve questions of the constitutionality of certain election laws of the State of Ohio. In the *Socialist Labor Party* case, hereinafter also called the *political party case*, in conformity with the opinion of the District Court, the jurisdiction of the District Court was invoked under 42 U.S.C. Sections 1981, 1983 and 1988; 28 U.S.C. Section 1343 (3) and (4); 28 U.S.C. Sections 2201 and 2202; and the First and Fourteenth Amendments of the Constitution of the United States. In the *Sweetenham* case, hereinafter also called the *independent candidates case* in conformity with the opinion of the District Court, the jurisdiction of the District Court was invoked under 42 U.S.C. Section 1983; 28 U.S.C. Section 1343 (3) and (4); 28 U.S.C. Section 2201; and the following provisions of the Constitution of the United States: Article I, Section 2; Article IV, Sections 2 and 4; and the First, Ninth and Fourteenth Amendments

The order of the District Court in these cases was filed on July 29, 1970 and amended on July 31, 1970. Notices of appeal on behalf of the defendants James A. Rhodes, Governor of Ohio, Ted W. Brown, Secretary of State of Ohio, and Paul W. Brown, Attorney General of Ohio, also referred to herein as the appealing defendants, were filed in the District Court on August 17, 1970. The Board of Elections of Cuyahoga County, Ohio, which was named a party-defendant in *Sweetenham*, the *independent candidates case*, and participated in the District Court proceedings, did not file a notice of appeal. Subsequent thereto the defendant John Gilligan, Governor of the State of Ohio, was substituted for James A. Rhodes and William J. Brown, Attorney General of Ohio, was substituted for Paul W. Brown.

The statutory provisions believed to confer jurisdiction on this Court to hear these cases on appeal are 28 U.S.C.

Sections 1253 and 2101. The case believed to sustain jurisdiction is *Williams* v. *Rhodes*, 393 U.S. 23 (1968).

OPINIONS BELOW

The opinion and order of the District Court in both of these cases are reported at 318 F. Supp. 1262 (S.D. Ohio, E.D. 1970) and are included in the Appendix at pp. 46-69. The Amended Order of the District Court may be found in the Appendix at pp. 70-71.

STATUTES INVOLVED

The appeals of the appealing defendants John J. Gilligan, Governor of Ohio, Ted W. Brown, Secretary of State, and William J. Brown, Attorney General, involve the following sections of the Ohio Revised Code. All pertinent sections of the Revised Code which have been amended subsequent to *Williams v. Rhodes* appear with amended clauses in capital type and deletions in canceled type. New statutes appear in capital type.

Sec. 3501.01. **Definitions.** As used in the sections of the Revised Code relating to elections AND POLITICAL COMMUNICATIONS AS SET FORTH IN SECTION 3599.09 OF THE REVISED CODE.

(A) "General election" means any election held on the first Tuesday after the first Monday in November.

(B) "Regular municipal election" means the election held on the first Tuesday after the first Monday in November in odd-numbered years.

(C) "Regular state election" means the election held on the first Tuesday after the first Monday in November in even-numbered years.

(D) "Special election" means any election other than the elections required to be regularly held on the day of a general or primary election, provided that a special election may also be held on the day of a general or primary election.

(E) "Primary" or "primary election" means an elec-

tion held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties and as delegates and alternates to the conventions of political parties. Primary elections shall be held on the first Tuesday after the first Monday in May of each year.

(F) "Party" or "political party" means an aggregation of persons having the rights, privileges, and duties provided by law for political parties.

(G) "Dominant party in a precinct" or "dominant political party in a precinct" means that political party whose candidate for election to the office of governor at the next preceding regular state election received more votes than any other person received for election to said office in such precinct at such election.

(H) "CANDIDATE" MEANS ANY QUALIFIED PERSON CERTIFIED IN ACCORDANCE WITH THE PROVISIONS OF THE REVISED CODE FOR PLACEMENT ON THE OFFICIAL BALLOT OF A PRIMARY, GENERAL, OR SPECIAL ELECTION TO BE HELD IN THIS STATE, OR ANY QUALIFIED PERSON WHO KNOWINGLY ASSENTS TO SUCH REPRESENTATION BY ANOTHER AT EITHER A PRIMARY, GENERAL, OR SPECIAL ELECTION TO BE HELD IN THIS STATE.

(I) "QUESTION OR ISSUE" MEANS ANY QUESTION OR ISSUE CERTIFIED IN ACCORDANCE WITH THE PROVISIONS OF THE REVISED CODE FOR PLACEMENT ON ANY OFFICIAL BALLOT OF A PRIMARY, GENERAL, OR SPECIAL ELECTION TO BE HELD IN THIS STATE.

~~(H)~~ (J) "Elector" or "qualified elector" means a person having the qualifications provided by law to entitle him to vote.

~~(I)~~ (K) "Voter" means an elector who votes at any election.

~~(J)~~ (L) "Voting residence" means that place of residence of an elector which shall determine the precinct in which he may vote.

~~(K)~~ (M) "Precinct" means a district within a county established by the board of election of such county within which all qualified electors having a voting residence therein may vote at the same polling place.

~~(L)~~ (N) "Polling place" means that place provided for each precinct at which the electors having a voting residence in such precinct may vote.

~~(M)~~ (O) "Board" or "board of elections" means the board of elections appointed in a county pursuant to sections 3501.06 and 3501.07 of the Revised Code.

~~(N)~~ (P) "Political subdivision" means "county," "township," "city," "village," or "school district."

Sec. 3505.03. **Office type ballot.** On the office type ballot shall be printed the names of all candidates for election to offices, except judicial offices, who were nominated at the next preceding primary election as candidates of a political party or who were nominated in accordance with section 3513.02 of the Revised Code, and the names of all candidates for election to offices who were nominated by nominating petitions, except candidates for judicial offices, for member of the state board of education, for member of a board of education, for municipal offices, and for township offices.

The face of such ballot below the stub shall be substantially in the following form:

OFFICIAL OFFICE TYPE BALLOT

(A) To vote for a candidate place "X" in the rectangular space at the left of the name of such candidate.

(B) If you tear, soil, deface, or erroneously mark this

ballot, return it to the precinct election officers and obtain another ballot.

USE "X" ONLY IN MARKING BALLOT

The order in which the offices shall be listed on the ballot shall be prescribed by, and certified to each board of elections by, the secretary of state; provided that for state, district, and county offices the order from top to bottom shall be as follows: governor, lieutenant governor, attorney general, auditor of state, secretary of state, treasurer of state, United States senator, representative at large to congress, district representative to congress, state senate, state representative, county commissioner, county auditor, prosecuting attorney, clerk of the court of common pleas, sheriff, county recorder, county treasurer, county engineer, and coroner.

The names of all candidates for an office shall be arranged in a group under the title of that office, and shall be so alternated that each name shall appear, insofar as may be reasonably possible, substantially an equal number of times at the beginning, at the end, and in each intermediate place, if any, of the group in which such name belongs.

The method of printing and combining the ballots in tablets to meet the rotation requirements of this section shall be as follows: The least common multiple of the number of names in each of the several groups of candidates shall be used and the number of changes made in the printer's forms in printing such ballots shall correspond with such multiple. On the first series of ballots, the names of the candidates in each group of candidates shall be in alphabetical order. On each succeeding series, the names of the candidates in each group of candidates which is first in the preceding series shall be last and the names of each of the candidates in each group shall be moved up one place. The printed ballots shall then be

combined in tablets by assembling series of ballots each consisting of one ballot of each series printed as described in this paragraph, assembled in the same consecutive order in which the series in which each ballot is a part was printed, dividing such assembled series of ballots in instances in which the total number of ballots in each series shall exceed the number of ballots required in a precinct and otherwise by combining as many of such assembled series of ballots as are necessary to make tablets consisting of the number of ballots required for each precinct.

Under the name of each candidate nominated at a primary election and each candidate certified by a party committee to fill a vacancy as provided by section 3513.31 of the Revised Code shall be printed the name of the political party by which such candidate was nominated or certified.

Except as provided in this section, no words, designations, or emblems descriptive of a candidate or his political affiliation, or indicative of the method by which such candidate was nominated or certified, shall be printed under or after a candidate's name which is printed on the ballot. [~~No blank spaces shall be provided on such ballot where an elector may write in the name of a person for whom he desires to vote, except that if no candidate has been nominated for an office or certified to fill a vacancy in a nomination for an office for which an election is to be held. blank spaces shall be provided under the title of said office equal in number to the number of persons to be elected to such office.~~]

Sec. 3505.10. **Presidential Ballot.** On the presidential ballot below the stubs at the top of the face thereof shall be printed "Official Presidential Ballot" centered between the side edges of the ballot. Below "Official Presidential Ballot" shall be printed a heavy line centered between the side edges of the ballot. Below said

line shall be printed "Instruction to Voters" centered between the side edges of the ballot, and below such words shall be printed the following instructions:

"(A) To vote for the candidates for president and vice-president whose names are printed below, mark "X" in the rectangular space at the left of the names of such candidates. Such "X" mark will be counted as a vote for each of the candidates for presidential elector whose names have been certified to the secretary of state and who are members of the same political party as the nominees for president and vice-president. AN "X" MARK FOR INDEPENDENT CANDIDATES FOR PRESIDENT AND VICE-PRESIDENT SHALL BE COUNTED AS A VOTE FOR THE PRESIDENTIAL ELECTORS FILED BY SUCH CANDIDATES WITH THE SECRETARY OF STATE.

"(B) TO VOTE FOR CANDIDATES FOR PRESIDENT AND VICE-PRESIDENT IN THE BLANK SPACE BELOW, MARK "X" IN THE LEFT RECTANGULAR SPACE AND WRITE THE NAMES OF YOUR CHOICE FOR PRESIDENT AND VICE-PRESIDENT UNDER THE RESPECTIVE HEADINGS PROVIDED FOR THOSE OFFICES. SUCH WRITE-IN WILL BE COUNTED AS A VOTE FOR THE CANDIDATES' PRESIDENTIAL ELECTORS WHOSE NAMES HAVE BEEN PROPERLY CERTIFIED TO THE SECRETARY OF STATE.

"~~(B)~~ (C) If you tear, soil, deface, or erroneously mark this ballot, return it to the precinct election officers and obtain another ballot."

Below such instructions to the voter shall be printed a single vertical column of enclosed rectangular spaces equal in number to the number of ~~political parties having~~ presidential candidates ~~whose names are to be printed on such ballot as provided in this section~~ PLUS ONE ADDITIONAL SPACE FOR WRITE-IN CANDIDATES. Each of such

rectangular spaces shall be enclosed by a heavy line along each of its four sides, and such spaces shall be separated from each other by one-half inch of open space.

In each of such enclosed rectangular spaces, EXCEPT THE SPACE PROVIDED FOR WRITE-IN CANDIDATES, shall be printed the names of the candidates for president and vice-president nominated as such by the national convention of a political party to which delegates and alternates were elected in this state at the next preceding primary election, AND THE NAMES OF THOSE INDEPENDENT CANDIDATES NOMINATED BY PETITION IN ACCORDANCE WITH SECTION 3513.258 OF THE REVISED CODE. The names of candidates for electors of president and vice-president ~~of any political party~~ shall not be placed on the ballot, but shall ~~after nomination~~ be certified to the secretary of state as required by ~~section~~ SECTIONS 3513.11 AND 3513.258 of the Revised Code. A vote for any of such candidates for president and vice-president shall be a vote for the electors of ~~the political party by which~~ such candidates ~~were nominated and~~ whose names have been certified to the secretary of state.

The arrangement of the printing in each of such enclosed rectangular spaces shall be substantially as follows: Near the top and centered within the rectangular space shall be printed "For President" in ten point boldface upper and lower case type. Below "For President" shall be printed the name of the candidate for president in twelve point boldface upper case type. Below the name of the candidate for president shall be printed the name of the political party by which such candidate for president was nominated in eight point lightface upper and lower case type. Below the name of such political party shall be printed "For Vice-President" in ten point boldface upper and lower case. Below "For Vice-President" shall be printed the name of the candidate for

vice-president in twelve point boldface upper case type. Below the name of the candidate for vice-president shall be printed the name of the political party by which such candidate for vice-president was nominated in eight point lightface upper and lower case type. NO POLITICAL IDENTIFICATION OR NAME OF ANY POLITICAL PARTY SHALL BE PRINTED BELOW THE NAMES OF PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES NOMINATED BY PETITION.

The rectangular spaces on the ballot described in this section shall be rotated in such order on the ballots, and the ballots shall be so combined in tablets for use at the polling place in each precinct on election day, that on no two consecutive ballots in a tablet shall such spaces be in the same order.

Sec. 3513.041. **Write-in Space Required; Declaration of Intent of Write-in Candidate.** A WRITE-IN SPACE SHALL BE PROVIDED ON THE BALLOT FOR EVERY OFFICE, BUT WRITE-IN VOTES SHALL NOT BE COUNTED FOR ANY CANDIDATE WHO HAS NOT FILED A DECLARATION OF INTENT TO BE A WRITE-IN CANDIDATE PURSUANT TO THIS SECTION. A QUALIFIED PERSON WHO HAS FILED A DECLARATION OF INTENT MAY RECEIVE WRITE-IN VOTES AT EITHER A PRIMARY OR GENERAL ELECTION. ANY CANDIDATE, EXCEPT ONE WHOSE CANDIDACY IS TO BE SUBMITTED TO ELECTORS THROUGHOUT THE ENTIRE STATE, SHALL FILE A DECLARATION OF INTENT TO BE A WRITE-IN CANDIDATE BEFORE FOUR P.M. OF THE TWENTIETH DAY PRECEDING THE ELECTION AT WHICH SUCH CANDIDACY IS TO BE CONSIDERED. IF THE ELECTION IS TO BE DETERMINED BY ELECTORS OF A COUNTY OR A DISTRICT OR SUBDIVISION WITHIN THE COUNTY, SUCH DEC-

LARATION SHALL BE FILED WITH THE BOARD OF ELECTIONS OF THAT COUNTY. IF THE ELECTION IS TO BE DETERMINED BY ELECTORS OF A SUBDIVISION LOCATED IN MORE THAN ONE COUNTY, SUCH DECLARATION SHALL BE FILED WITH THE BOARD OF ELECTIONS OF THE COUNTY IN WHICH THE MAJOR PORTION OF THE POPULATION OF SUCH SUBDIVISION IS LOCATED. IF THE ELECTION IS TO BE DETERMINED BY ELECTORS OF A DISTRICT COMPRISED OF MORE THAN ONE COUNTY BUT LESS THAN ALL OF THE COUNTIES OF THE STATE, SUCH DECLARATION SHALL BE FILED WITH THE BOARD OF ELECTIONS OF THE MOST POPULOUS COUNTY IN SUCH DISTRICT. ANY CANDIDATE FOR AN OFFICE TO BE VOTED UPON BY ELECTORS THROUGHOUT THE ENTIRE STATE SHALL FILE A DECLARATION OF INTENT TO BE A WRITE-IN CANDIDATE WITH THE SECRETARY OF STATE BEFORE FOUR P.M. OF THE TWENTIETH DAY PRECEDING THE ELECTION AT WHICH SUCH CANDIDACY IS TO BE CONSIDERED. IN ADDITION, CANDIDATES FOR PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES SHALL ALSO FILE WITH THE SECRETARY OF STATE BY SAID TWENTIETH DAY A SLATE OF PRESIDENTIAL ELECTORS SUFFICIENT IN NUMBER TO SATISFY THE REQUIREMENTS OF THE UNITED STATES CONSTITUTION.

THE SECRETARY OF STATE SHALL PRESCRIBE THE FORM OF THE DECLARATION OF INTENT TO BE A WRITE-IN CANDIDATE.

Sec. 3513.10. **Filing Fees of Candidates.** At the time of filing a declaration of candidacy for nomination for any office, OR A DECLARATION OF INTENT TO BE A WRITE-IN CANDIDATE, each candidate shall pay a fee

of one-half of one per cent of the annual salary of such office; but in no case shall such fee be less than one nor more than fifty dollars. No fee shall be required of candidates filing for the office of delegate or alternate to the national convention of political parties, member of the state central committee, or member of the county central committee. [~~Candidates whose names are written in on the ballot, as provided in section 3513.23 of the Revised Code, and who are nominated, shall pay the same fee as candidates who declare their candidacy. Payment of this fee by such candidates shall be a condition precedent to the granting of their certificates of nomination.~~] All such fees shall forthwith be paid by the officer receiving them into the state treasury, in the case of fees received by the secretary of state, and into the county treasury to the credit of the county general fund, in the case of fees received by a board of election. In no case shall be the filing fee be returned to a cadidate.

Sec. 3513.11. **Delegates and Alternates to the State Party Convention.** In the year 1952 and in each second year thereafter, each political party in the state shall hold a state convention composed of delegates who shall be its candidates for election to state offices, except judicial offices; its candidates for election to the office of member of the senate of the United States, member of the house of representatives of the United States, and member of the general assembly of Ohio; the members of its state central and executive committees, and the chairman of its county central and executive committees; and 500 delegates to be apportioned by the state central committee of the respective parties among the several counties of the state in proportion to its party's vote for governor cast in the several counties at the last preceding general election; provided that in any even-numbered year in which no election is to be held to elect successors to incumbents of any of the offices mentioned in this section, except judicial offices, each such incumbent shall

also be a delegate to the state convention of his political party. The delegates to such convention apportioned to each county by the state central committee of the respective parties shall be selected by the county executive committees of the respective parties.

At each convention of a political party the state platform of such party for such year shall be formulated.

The state central committee of each political party shall fix the time and place for holding the convention of its party.

At the state convention of each political party held in 1952, and in each fourth year thereafter, persons shall be nominated as candidates for election as presidential electors to be voted for at the next succeeding general election. Within five days after the holding of each such convention the chairman and secretary thereof shall certify in writing to the secretary of state the names of all persons nominated at such convention as candidates for election as presidential electors.

Sec. 3513.12. **National Convention Delegates and Alternates.** At the primary election which shall be held on the first Tuesday after the first Monday in May in the year 1952, and similarly in every fourth year thereafter, delegates at large and alternates at large to the national conventions of the different political parties shall be chosen by direct vote of the electors in the manner prescribed in sections 3513.01 to 3513.32, inclusive, of the Revised Code, for the nomination of candidates for state offices, except that whenever any group of candidates for delegate at large or alternate at large file with the secretary of state statements as provided by this section, designating the same persons as their first and second choices for president of the United States, such a group of candidates may submit a group petition containing a declaration of candidacy for each of such candidates, and such group petition need be signed only by the number of

electors required for the petition of a single candidate, provided that no group petition may be submitted except by a group of candidates equal in number to the whole number of delegates at large or alternates at large to be elected.

Candidates for election as delegates and alternates to such conventions from districts within the state shall be chosen by direct vote of the electors in the manner prescribed in such sections for the nomination of candidates for district offices, except that whenever any group of candidates for district delegate and alternate file with the secretary of state statements as provided by this section, designating the same persons as their first and second choices for president of the United States, such a group of candidates may submit a group petition containing a declaration of candidacy for each of such candidates, and such group petition need be signed only by the number of electors required for the petition of a single candidate, provided that no group petition may be submitted except by a group of candidates equal in number to the whole number of district delegates and alternates to be elected. Each person seeking to be elected as delegate or alternate to such national convention shall file with his declaration of candidacy and certificate a statement in writing signed by him in which he shall state his first and second choice for nomination as candidate of his party for the presidency of the United States. The secretary of state shall not permit any declaration of candidacy and certificate of a candidate for election as such delegate or alternate to be filed unless accompanied by such statement in writing; provided that the name of no candidate for the presidency shall be so used without his written consent. The name of such first and second choice for nomination as candidate for the presidency of each candidate for election as such delegate or alternate shall be printed and appear on the primary

ballots immediately below the name of such candidate in such a way as to clearly disclose the preference of each candidate. Each candidate for election as such delegate or alternate may also file along with his declaration of candidacy and certificate a statement in writing signed by him in the following form:

Statement of candidate for election

as {delegate / alternate} to the (here insert name of political party) national convention.

I hereby declare to the voters of my political party in the state of Ohio that, if elected as

{delegate / alternate} to their national party convention,

I shall, to the best of my judgment and ability, support that candidate for president of the United States who shall have been selected at this primary by the voters of my party in the manner provided in sections 3513.01 to 3513.32, inclusive, of the Revised Code, as their candidate for such office.

For signature of candidate for {alternate / delegate}

Sec. 3513.19. **Challenge of Electors; Determination of Political Affiliation.** At a primary election every qualified elector who is twenty-one or more years of age, or who will be twenty-one or more years of age on or before the day of the next general election, and who is a member of or is affiliated with the political party whose primary election ballot he desires to vote, shall be entitled to vote such ballot at such primary election. It is the duty of any witness or challenger and of any judge or clerk of elections and the right of any elector, when-

ever he doubts that a person attempting to vote at a primary election is legally entitled to vote at such election, to challenge the right of such person to vote. The right of a person to vote at a primary election may be challenged upon the following grounds:

(A) That the person whose right to vote is challenged is not a legally qualified elector;

(B) That he has received or has been promised some valuable reward or consideration for his vote;

(C) That he is not affiliated with or is not a member of the political party whose ballot he desires to vote.

Membership in or political affiliation with a political party shall be determined, as to one who has voted in a previous regular state election, by his sworn statement as to how he voted in the next preceding regular state election at which he voted. If he states under oath that at the next preceding regular state election at which he voted, he voted for a majority of the candidates of that political party of which, at the time of the challenge, he claims to be a member, or with which he then claims to be affiliated, he shall be deemed to be a member of and affiliated with such political party. If a person states under oath that he has not voted at a previous regular state election and that he desires to be a member of and affiliated with a particular political party, he shall be deemed to be a member of and affiliated with such political party.

Sec. 3513.191. **Qualification.** No person shall be a candidate for nomination or election at a party primary if he voted as a member of a different political party at any primary election within the next preceding four calendar years.

Sec. 3513.252. **Independent Candidates for Office in Municipality of More Than 2,000 Population.** The nominating petitions of independent candidates for election

as officers of a municipal corporation having a population in excess of two thousand, as ascertained by the next preceding federal census, in which a primary was held for the nomination of candidates of a political party for the next preceding regular municipal election and in municipal corporations in excess of two thousand, as ascertained by the next preceding federal census, where primaries were eliminated because the number of persons filing declarations of candidacy as candidates of one political party did not exceed as to any office, the number of candidates to be nominated for such office, shall be signed by not less than twenty-five qualified electors of the municipal corporation, or a ward thereof in case of the nominating petition of a candidate for election as councilman from such ward, in which the candidate designated therein would be a candidate for election as an official thereof or not less than ~~seven~~ FOUR per cent of the number of electors who voted for governor, OR FOR PRESIDENTIAL ELECTORS, at the next preceding regular state election in the municipal corporation, or a ward thereof in case of the nominating petition of a candidate for election as councilman from such ward, whichever is the greater; provided that no such nominating petition shall be accepted for filing or filed if it appears on its face to contain signatures aggregating in number more than twice the minimum aggregate number of signatures required by this section. Such petition shall be filed with the board of elections not later than four p.m. of the ninetieth day before the first Tuesday after the first Monday in May immediately preceding such general election.

Sec. 3513.256. **Independent Candidates for County Office.** The nominating petition of independent candidates for the office of county commissioner, county auditor, prosecuting attorney, clerk of the court of common

pleas, sheriff, county recorder, county treasurer, county engineer, coroner, shall be signed by not less than twenty-five qualified electors of the county, or not less than ~~seven~~ FOUR per cent of the number of electors who voted for governor, OR FOR PRESIDENTIAL ELECTORS, at the next preceding regular state election in the county, whichever is the greater. The nominating petition of independent candidates for the office of judge of probate court, judge of the court of common pleas, and such other courts as are established by statute, shall be signed by qualified electors not less in number than ~~seven~~ FOUR per cent of the number of electors who voted for governor, OR FOR PRESIDENTIAL ELECTORS, at the next preceding regular state election in the territory over which such court has jurisdiction, or twenty-five hundred electors, whichever is the lesser number.

No such nominating petition shall be accepted for filing or filed if it appears on its face to contain signatures aggregating in number more than twice the minimum aggregate number of signatures required by this section. Such petition shall be filed with the board of elections not later than four p.m. of the ninetieth day before the first Tuesday after the first Monday in May immediately preceding such general election.

Sec. 3513.257. **Independent Candidates for Office of State Representative, State Senator, District Representative to Congress, and Judge of the Court of Appeals.** The nominating petition of an independent candidate for the office of representative to the general assembly, senator of the general assembly, and district representative to congress, shall be signed by not less than ~~seven~~ FOUR per cent of the number of electors who voted for governor, OR FOR PRESIDENTIAL ELECTORS, at the next preceding regular state election for the office of governor in the district. The nominating petition of independent candidates for the office of judge of the court of appeals shall

be signed by qualified electors not less in number than ~~seven~~ FOUR per cent of the number of electors who voted for governor, OR FOR PRESIDENTIAL ELECTORS, at the next preceding regular state election in the territory over which such court has jurisdiction, or twenty-five hundred electors, whichever is the lesser number.

No such nominating petition shall be accepted for filing or filed if it appears on its face to contain signatures aggregating in number more than twice the minimum aggregate number of signatures required by this section. If the district consists of more than one county, such petition shall contain the signatures of at least fifty electors from each of at least one-half of the several counties of such district. Such petition shall be filed with the board of elections of that county or part of a county within the district which had a population greater than that of any other county or part of a county within the district according to the last federal decennial census, not later than four p.m. of the ninetieth day before the first Tuesday after the first Monday in May immediately preceding such general election.

Sec. 3513.258. **Independent Candidates for State Office, President and Vice-President of the United States, United States Senator, and Representative at Large to Congress.** The nominating petition of an independent candidate for the office of governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, judge of the supreme court, PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES, United States senator, and representative at large to congress, shall be signed by not less than ~~seven~~ FOUR per cent of the number of electors who voted for governor, OR FOR PRESIDENTIAL ELECTORS, at the next preceding regular state election; provided that no such nominating petition shall be accepted for filing or filed if it appears on its face to contain signatures aggregating

in number more than twice the minimum aggregate number of signatures required by this section. Such petition shall contain signatures of at least two hundred electors from each of at least thirty counties in the state, and the total number of signatures of electors from any one county shall not be in excess of one fourth of the total number of signatures required on the petition. Such petition shall be filed with the secretary of state not later than four p.m. of the ninetieth day before the first Tuesday after the first Monday in May immediately preceding such general election.

NO NOMINATING PETITION FOR INDEPENDENT CANDIDATES FOR THE OFFICES OF PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES SHALL BE ACCEPTED FOR FILING UNLESS THERE IS SUBMITTED TO THE SECRETARY OF STATE, AT THE TIME OF FILING THE PETITION, A SLATE OF PRESIDENTIAL ELECTORS SUFFICIENT IN NUMBER TO SATISFY THE REQUIREMENTS OF THE UNITED STATES CONSTITUTION.

Sec. 3517.01. **Definition of Political Party.** A political party within the meaning of Title XXXV of the Revised Code is any group of voters which, at the last preceding regular state election, polled for its candidate for governor in the state OR NOMINEES FOR PRESIDENTIAL ELECTORS AT LEAST ~~ten~~ SEVEN per cent of the entire vote cast for ~~governor~~ such OFFICE or which filed with the secretary of state ~~at least ninety days before an election~~ a petition signed by qualified electors equal in number to at least ~~fifteen~~ SEVEN per cent of the total vote for governor OR NOMINEES FOR PRESIDENTIAL ELECTORS at the last preceding election, declaring their intention of organizing a political party, the name of which shall be stated in the declaration, and of participating in the next succeeding PRIMARY election,

HELD IN EVEN-NUMBERED YEARS, THAT OCCURS MORE THAN ONE HUNDRED TWENTY DAYS AFTER THE DATE OF FILING. ~~Such petition shall be circulated, signed, verified, and the signatures thereon examined and certified to in the same manner as is required of referendum petitions.~~ No such group of electors shall assume a name or designation which is similar, in the opinion of the secretary of state, to that of an existing political party as to confuse or mislead the voters at an election. When any political party fails to cast ~~ten~~ SEVEN per cent of the total vote cast at an election for the office of governor OR PRESIDENT it shall cease to be a political party.

Sec. 3517.012. **LEGAL EXISTENCE OF NEW PARTY.** WHEN A PETITION MEETING THE REQUIREMENTS OF SECTION 3517.01 OF THE REVISED CODE DECLARING THE INTENTION TO ORGANIZE A POLITICAL PARTY IS FILED WITH THE SECRETARY OF STATE, THE NEW PARTY COMES INTO LEGAL EXISTENCE ON THE DATE OF FILING AND IS ENTITLED TO HOLD A PRIMARY ELECTION AS SET OUT IN SECTION 3513.01 OF THE REVISED CODE, AT THE PRIMARY ELECTION, HELD IN EVEN-NUMBERED YEARS THAT OCCURS MORE THAN ONE HUNDRED TWENTY DAYS AFTER THE DATE OF FILING.

Sec. 3517.013. **CANDIDATES OF NEW PARTIES EXEMPTED FOR FOUR YEARS.** SECTION 3513.191 OF THE REVISED CODE DOES NOT APPLY TO PERSONS DESIRING TO BECOME CANDIDATES FOR PARTY NOMINATION OF A NEWLY FORMED POLITICAL PARTY MEETING THE REQUIREMENTS OF SECTIONS 3517.011 AND 3517.012 OF THE REVISED CODE FOR A PERIOD OF FOUR CALENDAR YEARS FROM THE DATE OF THE PARTY FORMATION.

Sec. 3517.014. **CANDIDATES OF NEW PARTIES EXEMPTED AT FIRST PRIMARY.** THOSE PROVISIONS OF SECTION 3513.19 OF THE REVISED CODE RELATING TO THE DETERMINATION OF MEMBERSHIP IN OR POLITICAL AFFILIATION WITH A PARTY DO NOT APPLY TO PERSONS DESIRING TO BECOME CANDIDATES FOR PARTY NOMINATION OF A NEWLY FORMED POLITICAL PARTY MEETING THE REQUIREMENTS OF SECTIONS 3517.011 AND 3517.012 OF THE REVISED CODE AT THE FIRST PRIMARY HELD BY THAT PARTY IN THE EVEN-NUMBERED YEAR OCCURRING SUBSEQUENT TO THE FORMATION OF THAT PARTY.

Sec. 3517.015. **SIGNERS OF DECLARATION OF CANDIDACY FOR NEW PARTY DEEMED MEMBERS REGARDLESS OF PRIOR POLITICAL AFFILIATION.** QUALIFIED ELECTORS WHO SIGNED DECLARATIONS OF CANDIDACY OF PERSONS DESIRING TO BECOME CANDIDATES FOR PARTY NOMINATION OF A NEWLY FORMED POLITICAL PARTY MEETING THE REQUIREMENTS OF SECTIONS 3517.011 AND 3517.012 OF THE REVISED CODE AT THE FIRST PRIMARY ELECTION HELD BY THAT PARTY IN THE EVEN-NUMBERED YEAR SUBSEQUENT TO THE PARTY FORMATION ARE NOT SUBJECT TO SECTION 3513.19 OF THE REVISED CODE AND SHALL, FOR THE PURPOSE OF SIGNING SAID DECLARATIONS OF CANDIDACY, BE DEEMED MEMBERS OF THE NEWLY FORMED POLITICAL PARTY REGARDLESS OF PRIOR POLITICAL AFFILIATION.

Sec. 3517.016. **ANY ELECTOR MAY VOTE THE NEW PARTY BALLOT AT ITS FIRST PRIMARY ELECTION.** AT THE FIRST PRIMARY ELECTION HELD BY A NEWLY FORMED POLITICAL PARTY MEETING THE REQUIREMENTS OF SECTIONS

3517.011 AND 3517.012 OF THE REVISED CODE, ANY QUALIFIED ELECTOR WHO DESIRES TO VOTE THE NEW PARTY PRIMARY BALLOT IS NOT SUBJECT TO SECTION 3513.19 OF THE REVISED CODE AND SHALL BE ALLOWED TO VOTE THE NEW PARTY PRIMARY BALLOT REGARDLESS OF PRIOR POLITICAL PARTY AFFILIATION.

Sec. 3517.02. **Election of Controlling Committees.** All members of controlling committees of a political party shall be elected by direct vote of the members of the party, except as otherwise provided in section 3517.05 of the Revised Code. Their names shall be placed upon the official ballot and the person receiving the highest number of votes for committeemen shall be the members of such controlling committees. Each member of a controlling committee shall be a resident and qualified elector of the district, ward, or precinct which he is elected to represent.

Sec. 3517.03. **Party Controlling Committees.** The controlling committees of each political party or organization shall be a state central committee consisting of two members, one a man and one a woman, from each congressional district in the state; a county central committee consisting of one member from each election precinct in the county, or of one member from each ward in each city and from each township in the county, as the outgoing committee determines; and such district, city, township, or other committees as the rules of the party provide.

All the members of such committees shall be members of the party and shall be elected by direct vote at the primary held in the even-numbered years. Candidates for election as state central committee members shall be elected at primaries in the same manner as provided in sections 3513.01 to 3513.32, inclusive, of the Revised Code, for the nomination of candidates for office in a

county. Candidates for election as members of the county central committee shall be elected at primaries in the same manner as provided in such sections for the nomination of candidates for county offices.

Each party controlling committee shall elect an executive committee which shall have such powers as are granted to it by the party controlling committee, and as are provided by law. When a judicial, senatorial, or congressional district is comprised of more than one county, the chairman and secretary of the county central committee from each county in such district shall constitute the judicial, senatorial, or congressional committee of such district. When a judicial, senatorial, or congressional district is included within a county, the county central committee shall constitute the judicial, senatorial, or congressional committee of such district.

Sec. 3517.04. **Organization of Party Central Committee.** The members-elect of each party central committee shall meet not earlier than six nor later than fifteen days following the date of the primary election at a suitable place and time to be designated by the retiring chairman of the committee. Notice of such meeting, giving the place and time, shall be sent to each member-elect by the retiring secretary of the committee by mail and a copy of the notice shall be posted in the office of the secretary of state or board of elections, as the case may be, at least five days prior to any such meeting. The meeting shall be called to order by the retiring chairman or secretary or if there is no such officers, or if such officer is absent, then by a member of such committee designated by the secretary of state in the case of the state committees, and by a member of the board of elections of the same political party, designated by the board, in the case of county committees. A temporary chairman and secretary shall be chosen and the committee shall proceed to organize by the election of a

chairman, vice-chairman, treasurer, secretary, and such other officers as the rules provide.

Sec. 3517.07. **Parties or Groups Engaged in Un-American Activities Barred from Ballot.** No political party or group which advocates, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government or which carries on a program of sedition or treason by radio, speech, or press or which has in any manner any connection with any foreign government or power or which in any manner has any connection with any group or organization so connected or so advocating the overthrow, by force or violence, of our local, state, or national government or so carrying on a program of sedition or treason by radio, speech, or press shall be recognized or be given a place on the ballot in any primary or general election held in the state or in any political subdivision thereof.

Any party or group desiring to have a place on the ballot shall file with the secretary of state and with the board of elections in each county in which it desires to have a place on the ballot an affidavit made by not less than ten members of such party, not less than three of whom shall be executive officers thereof, under oath stating that it does not advocate, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government; that it does not carry on any program of sedition or treason by radio, speech, or press; that it has no connection with any foreign government or power; that it has no connection with any group or organization so connected or so advocating, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government or so carrying on a program of sedition or treason by radio, speech, or press.

Said affidavit shall be filed not less than six nor more than nine months prior to the primary or general elec-

tion in which the party or group desires to have a place on the ballot. The secretary of state shall investigate the facts appearing in the affidavit and shall within sixty days after the filing thereof find and certify whether or not this party or group is entitled under this section to have a place on the ballot.

Any qualified member of such party or group or any elector of this state may appeal from the finding of the secretary of state to the supreme court of Ohio.

This section does not apply to any political party or group which has had a place on the ballot in each national and gubernatorial election since the year 1900.

STATEMENT OF THE CASES

These cases involve several key aspects of numerous election laws of the State of Ohio. In *Williams v. Rhodes*, 293 U.S. 23 (1968) this Court had occasion to consider portions of the same body of law under circumstances involving extreme haste, for which the Court was not at fault. The State has dutifully endeavored to follow the extensive opinion in *Williams, supra*, as reflected by various amendments of the Ohio Statutes since its announcement. On January 28, 1970, the Socialist Labor Party filed in the U.S. District Court for the Southern District of Ohio, Eastern Division, a complaint challenging the constitutionality of nine Ohio election laws. The party sought ballot status for its candidates in the November, 1970 general election. The political party case was consolidated with another case challenging several statutory requirements for independent candidates.

The case was heard by a three-judge court after the filing of opposing motions for summary judgment. The court held unconstitutional several of the contested statutes, but upheld the validity of Ohio's election oath. While the court ordered the candidates of the Socialist Labor Party be placed on the ballot, it denied similar relief to the independent candidates. The Socialist Labor Party has appealed the District Court's ruling with regard to the loyalty oath. The plaintiffs Sweetenham, Stapleton, and Tussey have appealed the constitutionality of Ohio's requirement that nominating petitions for independent candidates be filed before the general election. The State has appealed from that part of the decision of the District Court holding Ohio's election laws invalid.

More specifically, the court adjudged the following statutes or parts thereof as being unconstitutional: §3517.01 as amended (the 7% requirement for political party ballot status); §3505.10 as amended, and §3513.12 as amended (requiring national party conventions for

party candidates for presidential nomination); §3513.11 (requiring state conventions and state-wide party organization); §3517.02, .03, and .04 (specifying the organizational structure of a party). The District Court rulings on these statutes are appealed by the defendants in the Socialist Labor Party case (the political party case), which is case number 814 in this Court and number 70-23 in the court below. The plaintiffs have also appealed certain holdings in this portion of the consolidated case with respect to the party oath requirement of §3517.07 of the Ohio Revised Code. The defendants have also appealed the court's same ruling on the party oath requirement for different reasons.

In the independent candidates case, the court below adjudged portions of two of Ohio's election laws unconstitutional. Those sections are 3513.257 and 3513.258. The former deals with requirements for independent candidates for U.S. Representatives while the latter deals with requirements for independent candidates for governor of the State of Ohio. The defendants have appealed the ruling of the court below on portions of these statutes. The plaintiffs, Sweetenham, et al., appealed the refusal of the District Court to declare unconstitutional the ninety day requirements of the same statutes. The ninety day provision requires independent candidates to file a nominating petition prior to the primary election but gives the independent candidates more time within which to file their nominative petitions than party candidates are given.

In the 1970 general election in Ohio, in conformance with the District Court opinion and ruling, the candidates of the Socialist Labor Party were placed on the ballot, but the independent candidates were not, due to their failure to comply with the valid ninety day requirement (*supra*).

The plaintiffs filed in this Court a Motion to Affirm,

petitioning the Court to affirm those portions of the District Court's decision which the State has appealed. The defendants in turn filed a Motion to Dismiss and Brief in Support thereof, which asked this Court to dismiss the Socialist Labor Party's appeal of the District Court's affirmance of the oath requirement. On March 29, 1970, this Court noted probable jurisdiction and thus, in effect, overruled these two motions. 39 U.S.L.W. 3424 (March 29, 1971).

QUESTIONS PRESENTED

1. Is the provision contained in Section 3517.01, Ohio Revised Code, that a group desiring recognition as a political party in Ohio either have polled seven percent of the vote in the last preceding election for governor or nominees for presidential elections or present a petition to the Secretary of State containing the signatures of qualified voters who represent seven percent of the votes cast in the last preceding election for governor or nominees for presidential elections, unconstitutional?

2. Are the provisions of Sections 3517.02, 3517.03, and 3517.04, Ohio Revised Code, which Sections specify the organizational structure of a political party in Ohio, unconstitutional?

3. Is the provision contained in Section 3513.11, Ohio Revised Code, that a political party elect a specified number of delegates and alternates to a state convention, unconstitutional?

4. Are the provisions of Section 3505.10, Ohio Revised Code, relating to the presidential ballot, unconstitutional, even though this Section has been amended to provide space on the ballot for the names of independent candidates?

5. Are the provisions of Section 3513.12, Ohio Revised Code, relating to national convention delegates and alternates, unconstitutional, even though this Section has been amended to permit the filing of group petitions?

6. Is the "Loyalty oath" prescribed by Section 3517.07, Ohio Revised Code, unconstitutional on its face?

7. Are the provisions of Section 3513.257, Ohio Revised Code, which requires an independent candidate for the office of representative to Congress to file a nominating petition signed by four percent of the number of electors who voted for governor or presidential electors in the district at the last preceding regular state election and a similar part of Section 3513.258, Ohio Revised

Code, which requires signatures of qualified voters representing four percent of the total state vote for governor or nominees for presidential election in the last preceding election.

8. Are the provisions of Section 3513.258, Ohio Revised Code, which require an independent candidate for statewide office to file a nominating petition including the signatures of at least two hundred electors from at least thirty counties, and limit the number of signatures from any one county to no more than one fourth of those needed, unconstitutional?

SUMMARY OF ARGUMENT

This Court in its majority opinion in *Williams v. Rhodes*, found nine statutes, in their totality, unconstitutional. The Ohio legislature subsequently revised its election code significantly. The District Court below in this new lawsuit involving the Socialist Labor Party and independent candidates declared the amendments unconstitutional as well as newly enacted statutes. The many amendments of substance changed the electoral process in Ohio, making it substantially easier for third parties, as well as for write-in and independent candidates, to gain access to the ballot. As a result of these changes the District Court below should not have found nine statutes unconstitutional.

An examination of the changes, in the light of cases decided subsequent to the *Williams* case, including *Jenness v. Fortson*, 39 U.S.L.W. 4791 (June 21, 1971), which was decided after the District Court case below, should have compelled a totally different result.

The District Court should not have declared amended §3517.01 unconstitutional because it drastically reduced (by over 50%) the number of signatures required for a new party to obtain ballot status. It should not have declared unconstitutional the amended statutes which reduced signature requirements for independent candidates from 7% to 4%, another substantial reduction which *a fortiori* does not violate Equal Protection standards. These statutes have a "30 county requirement" (out of the 88 counties) which is much less burdensome than the Illinois statutes in *Moore v. Ogilvie*, 394 U.S. 814 (1969), a 50 county requirement out of 112 or forty-nine percent.

Further, the District Court below narrowly interpreted Ohio's party election oath, §3517.07, stating that it attempts to prohibit mere advocacy and is thus overly broad. Such a narrow interpretation is not necessary

since the State of Ohio is not penalizing advocacy but merely preventing political parties that advocate unlawful action access to a means for achieving such unlawful actions.

It is, therefore, apparent that in their entirety, the Ohio Election laws do not violate the First or Fourteenth Amendments, but on the contrary, are legitimate requirements aimed at protecting Ohio's voting public and promoting our system of representative government.

ARGUMENT

I. SINCE THE OHIO LEGISLATION HAS DRASTICALLY ALTERED THE STATE'S ELECTION LAWS TO MEET THE CONSTITUTIONAL OBJECTIONS IN *WILLIAMS V. RHODES*, THE CURRENT CHALLENGE TO OHIO'S ELECTION LAWS INVOLVES A TOTALLY DIFFERENT STATUTORY FRAMEWORK THAN THE ONE PREVIOUSLY CONSIDERED BY THIS COURT.

In October of 1968, this Court held that a portion of the State of Ohio's Election Laws to choose presidential electors as a totality, were constitutionally infirm under the First and Fourteenth Amendments. *Williams v. Rhodes, et al.*, 393 U.S. 23 (1968). Pursuant to that ruling, the Ohio Legislature amended significantly many of these statutes, so that the totality of laws with which this Court was confronted in the *Williams* case is not presently before it. Pursuant to this Court's decision most of the old objectionable statutes were amended and many totally new ones were passed in the 1969 session of the Ohio Legislature. The instant cases involved an entirely different set of circumstances and offices, viz. Governor of the State of Ohio, United States Senator and United States Representative. The latter office is not a part of the political party case.

Effective October 30, 1969, the Legislature amended the following sections of the Ohio Revised Code:

(1) 3501.01 (write-in candidates);

(2) 3501.03 (abolishing the prohibition against write-in votes);

(3) 3505.10 (presidential ballot providing for independent and write-in candidates);

(4) 3513.252 (reduction in nominating petition signature requirements from 7% to 4% for independent candidates in municipal elections);

(5) 3513.256 (reduction in nominating petition signa-

ture requirements from 7% to 4% for independent candidates in county office elections);

(6) 3513.257 (reduction in nominating petition signature requirements from 7% to 4% for independent candidates in district office elections);

(7) 3513.258 (reduction in nominating petition signature requirements from 7% to 4% for independent candidates in statewide and national office elections);

(8) 3513.19 (new parties exempted by 3517.014, 3517.015, 3517.016 to aid new parties in obtaining votes);

(9) 3513.191 (new political parties exempted from challenge of electors for four years).

The Legislature enacted entirely new legislation also:

(1) 3517.012 (when new party comes into legal existence it may participate in the first primary thereafter);

(2) 3517.013 (candidates of new parties exempted from prohibition against switching parties for four years);

(3) 3517.014 (candidates of new parties exempted from challenge of political affiliation in primary);

(4) 3517.015 (electors signing nominating petitions deemed members of the new political party regardless of prior political affiliation); and

(5) 3517.016 (any elector may vote the new party ballot at its first primary election).

Of the statutes which were dealt with in the majority opinion of the Court, §§3513.05 and 3517.02-04 were not amended, but are presently in the process of being amended by the Ohio Legislature. An entirely different set of statutes is therefore now before this Court. The District Court below declared four of the election statutes, as amended, unconstitutional, viz. §§3505.10 (presidential ballot providing for independent and write-in candidates); 3513.257 (nominating petitions of independent candidates for district office-signatures reduced from 7% to 4%); 3513.258 (nominating petitions of independent candidates for state-wide and national offices—sig-

natures reduced from 7% to 4%); and 3517.01 (definition of a political party—signatures reduced from 15% to 7%). The District Court declared unconstitutional also unamended §§3513.12 (delegates and alternates to the National Party Convention); 3517.02 (procedure for electing party controlling committee—if the party has such a committee); 3517.03 (composition of party controlling committees); 3517.04 (organization of party central committees); and 3513.11 (delegates and alternates to the state party convention); some of which were dealt with in totality in the Court's majority opinion in *Williams v. Rhodes, supra.* All statutes which in combination were declared unconstitutional by this Court but which contrariwise were declared unconstitutional individually by the District Court below in the instant cases, are presently in the process of being amended further.

II. CHANGES IN THE TOTALITY OF OHIO'S ELECTION LAWS HAVE CREATED A LIBERAL CLIMATE FOR NEW PARTIES TO PARTICIPATE IN THE ELECTION PROCESS.

A. The Reduction Of The Signature Requirement From 15% to 7% Of The Registered Voters In The Last Gubernatorial Election Significantly Changes The Totality Of Ohio's Election Scheme.

In the instant case plaintiffs in the political party case are the Socialist Labor Party, its Ohio State Committee and Joseph Pirincin as a member, individually and on behalf of others. The complaint alleges that the amended §3517.01 of the Ohio Revised Code, which reduces the signature requirement, places an unreasonable burden on the plaintiffs' right of access to the ballot. The three Judge District Court below agreed and so held.

Ohio Revised Code §3517.01 presently requires a new

party to obtain petitions signed by an amount equal to only 7% of the voting electors instead of the former objectionable 15%—a reduction in number of signatures of approximately 225,000, based upon the 1968 figures, which this Court then had before it. This drastic reduction of a constitutionally burdensome provision in and of itself is sufficient to change the "totality" of the Ohio election laws. The Court's opinion stresses the totality concept at pages 32 and 34 of the *Williams* case, *supra*. Moreover, §3517.01 does not require that signatures come from any specified number of counties.

This Court has previously approved a 5% nominating petition requirement in *Jenness v. Fortson*, 39 U.S.L.W. 4791 (June 21, 1971). In fact, this requirement is more burdensome than the Ohio 7% petition requirement. Georgia's requirement is 5% of the registered voters at the last general election for the office in question, while Ohio's requirement is 7% of the actual vote cast for governor or for nominees for presidential electors at the last preceding election, Ohio Revised Code §3517.01. Since in Ohio approximately 69% of all eligible registered voters actually vote, the 7% is effectively 4.83% of all registered voters, as compared to 5% in Georgia. (Registration is required in only 50% of the Ohio counties: 3,276,231 voters cast ballots in the 1970 Gubernatorial election out of 4,747,391 eligible voters; the data used comes from the office of Secretary of State of Ohio and the U.S. Census Bureau.) In turn, Georgia's 5% is actually 7.14% of all those who voted in the last election, assuming approximately 70% of all registered voters vote in Georgia's election, as is true in Ohio. Georgia's requirement is more burdensome than Ohio's 7% of those actually voting.

This Court has recently approved a 5% (by district) petition requirement for political parties under a Florida election statute. The 5% applies to registered voters.

Beller v. Askew, 39 U.S.L.W. 3462 (S.D. Fla. 1970), affirmed without opinion, 39 U.S.L.W. 3554 (June 21, 1971); accord, *Beller v. Adams*, Fla. 325 S. 2d 502 (1970). The 5% requirement for number of signatures for independent candidates has been approved also by this Court. *Jackson v. Ogilvie*, 39 U.S.L.W. 2456 (N.D. Ill. 1971), affirmed without opinion, 39 U.S.L.W. 3553 (June 21, 1971). As the Ohio statutes now stand, there are no more constitutionally objectionable procedures than those which were passed upon in *Wood v. Putterman*, 316 F. Supp. 646 (D. Md. 1970), affirmed 91 S. Ct. 104 (1970).

The Court has most recently held that it was the combination of Ohio statutes which was objectionable and which made it virtually impossible for third parties to obtain ballot position *Jenness v. Fortson*, 39 U.S.L.W. 4791 (June 21, 1971). As shown both above and below, the Ohio statutory scheme has been drastically changed, and no longer freezes the political party status quo in Ohio.

B. New Statutes Providing For Independent Candidates On The Presidential Ballot, Write-in Votes, And Exemptions For New Parties Have In Combination Abolished The Possibility Of A Two-Party Monopoly in Ohio.

This Court found particularly "invidious," in addition to Ohio Revised Code §3517.01, (at the old 14% requirement) the fact that there was no provision for ballot position for independent candidates for the Presidency or Vice Presidency. *Williams v. Rhodes*, at 26. The State of Ohio has now supplied that deficiency with Ohio Revised Code §3513.258 (nominating petitions of independent candidates for state-wide and national offices—signatures reduced from 7% to 4%). Moreover, the Court found constitutionally infirm the requirement that petitions for party ballot status had to be filed by February

of the election year. *Williams v. Rhodes*, 26, 33. That provision has been changed to require slightly earlier filing, but new political parties and their candidates are now excused and exempted from certain otherwise mandatory primary provisions. These statutes were specifically designed in response to the Court's opinion in *Williams* at page 32, that new parties struggling for their place must have time and opportunity to organize.

By operation of this Court's opinion, Ohio Revised Code Sections 3517.02 to 3517.04 are of no effect—requirements for state central committeemen for new parties. The District Court below recognized these provisions as being for naught. *Socialist Labor Party v. Rhodes* (now Gilligan) (App. P. 51), 318 F. Supp. 1262 at 1266 (S.D. Ohio, 1970).

At the time of *Williams v. Rhodes*, Ohio had abolished write-in votes—there being no provision for them. *Williams v. Rhodes, supra*, at 35. Write-in votes are now provided for: Ohio Revised Code §§3513.041, 3501.01 (H), 3505.10, and 3513.10.

In view of the above, it can no longer be accurately said that Ohio endeavors to give the Republicans and Democrats a complete monopoly. The totality of Ohio's election statutes now is as constitutional as are those of Georgia in *Jenness v. Fortson*, 39 U.S.L.W. 4791 (June 22, 1971).

In the *Jenness* case, a "political body" candidate or an independent candidate to obtain ballot status has to obtain signatures equal to 5% of those eligible to vote. This criterion, to show voter interest, is more burdensome than the Ohio standard which requires only 7% of those who voted—a significantly smaller number. An examination of the Court's opinion as delivered by Mr. Justice Stewart shows Ohio's position vis-a-vis Georgia. Ohio, the same as Georgia, provides: for write-in votes; inde-

pendent nominees need not trace endorsement to a political party; "political party" has been defined (7% of actual votes) so as not to exclude all but the two major parties; and elaborate primary election machinery is not required. It may further be noted that Georgia requires candidates pay a filing fee of 5% of the annual salary of the office sought; Ohio has a filing fee of only one-half of 1%—but a maximum of fifty dollars ($50)—Ohio Revised Code §3513.10.

III. THE REQUIREMENTS OF PARTY ORGANIZATION AND STATE AND NATIONAL CONVENTIONS ARE NOT UNCONSTITUTIONALLY BURDENSOME SINCE THEY ARE OPTIONAL AND MUST BE CONSIDERED IN CONJUNCTION WITH OTHER LIBERAL ELECTION STATUTES.

The District Court below declared unconstitutional §§3517.02, .03, and .04. These sections are referred to in discussion above. This Court, in the *Williams* case, *supra*, held that within the context of that statutory pattern they were constitutionally infirm. These three statutes provide for political party organization. An examination shows that they are not mandatory. These sections are built upon a political party which has voluntarily established a controlling committee. If there is no controlling committee, there is no need for compliance. Neither §3517.02 nor the following sections require or demand, expressly or otherwise, the establishment of a controlling committee. It is only after a party organization voluntarily establishes a controlling committee that the mandatory provision of the three sections apply. Nevertheless, the District Court re-ruled these sections unconstitutional and ordered the State not to enforce them. There was no evidence that the State was trying to enforce them. In the context of this case, the statutes should not be held to be unconstitutional. In the present totality,

they should not be considered constitutionally infirm.

Ohio Revised Code §3513.11, providing for delegates and alternates to state conventions of political parties, was not dealt with in the Court's majority opinion in *Williams, supra.* It was, however, in Mr. Justice Douglas' separate concurring opinion. *Williams v. Rhodes*, 393 U.S. 23 (1968) at 36 n. 3. See also the dissent of Mr. Justice Stewart at 52 n. 7. In the light of the statutory changes set forth in detail, *supra*, this Ohio statute should not be held unconstitutional, nor should Ohio Revised Code Section 3513.12 providing for election of presidential electors and party platforms. While this Court's decision in *Williams, supra*, was based only on the presidential electors, the present case is not. It is based upon a party candidate for the offices of United States Senator and independent candidate for United States Representative. There are no allegations that the State of Ohio was forcing the plaintiff Socialist Labor Party to conform to these two statutory provisions. Plaintiffs have claimed, and defendants deny, that these provisions prevent the Socialist Labor Party from obtaining recognition as a party. Recognition as a party takes place upon compliance with §3517.01 of the Ohio Revised Code—the 7% signature requirement. The factual issue has never been presented because of the inability of the Socialist Labor Party to comply with the provisions of 3517.01. Neither of the above two statutes, taken in conjunction with all the amendments as well as with the entirely new election statutes, should be considered constitutionally infirm. In realistically viewing these allegedly burdensome requirements of §§3513.11, 3513.12, as well as 3517.02-.04, of the Ohio Revised Code, they are not burdensome at all in the light of the new liberal provisions of interrelated §3513.258, which allows for write-in candidates for President, Vice President of the United States, state offices, United States Senator, Representative at Large

to the United States Congress, and independent candidates for these offices. Other offices are covered by §3513.257. The signature requirement was reduced from seven percent to four percent. A list of Presidential electors must be filed, but there are no requirements for cumbersome political machinery or conventions or any other procedure which may be deemed burdensome.

It is particularly unfortunate that the District Court below should have declared unconstitutional §3513.12. The District Court erroneously assumed that §3513.12 had been amended subsequent to *Williams, supra*. It was not. Further, the District Court stated that this Court held §3513.12 unconstitutional. *Williams* does not so hold. The Court below based its decision on these erroneous foundations, and should be reversed. A reading of §3513.12 does not show any mandatory requirement for a party to have a national convention.

IV. OHIO'S PARTY OATH REQUIREMENT DOES NOT RESTRICT ADVOCACY BUT ONLY PREVENTS PARTIES THAT ADVOCATE THE OVERTHROW OF THE GOVERNMENT BY FORCE OR VIOLENCE FROM ATTAINING THE MEANS TO EXECUTE THEIR ILLEGAL GOALS.

While the district court also held that the statute requiring a party election oath given a narrow interpretation was constitutional, the court in its opinion intimated that §3517.07 is unconstitutional on its face because it attempts to prohibit mere advocacy and is thus overly broad. This issue was the third cause of action below and was treated as part of the Party case in the decision. This is a case of first impression with respect to an organizational oath for political parties. The court below cited *Keyishian v. Board of Regents*, 385 U.S. 589 (1967), in support of this contention. Yet this case is readily distinguishable from the party oath presently under con-

sideration. In *Keyishian* all employees of New York's educational system were required to swear that they did not "by word of mouth or writing wilfully and deliberately" advocate, advise, or teach the doctrine of forceful overthrow of the government. This Court held that that oath was invalid partly because it might have the effect of restricting the advocacy of abstract ideas in the classroom. No such danger to academic freedom is present in the Ohio oath. The election oath operates not to restrict political parties from advocating programs, but only prevents parties that advocate the forceful or violent overthrow of the government from attaining the means to execute their illegal goals. In this regard, Ohio's prohibition against the appearance on the ballot of parties that advocate the overthrow of the government by force or violence meets the constitutional standard enunciated by this Court in *Brandenburg v. Ohio*, 395 U.S. 444 (1969), also cited by the district court in its opinion. In *Brandenburg*, the Court stated that a state may not proscribe "advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and likely to incite or produce such action." *Brandenburg, supra*, at 447. The State of Ohio through the express words of the party oath requirement is not penalizing advocacy by prescribing a criminal sanction as in *Brandenburg*, but only preventing political parties that advocate unlawful action from producing such objectives.

This court has approved oaths required of a candidate in a state election. *Gerende v. Election Board*, 341 U.S. 56 (1951). This Court has, however, disapproved on various grounds, individual oaths required of persons in occupations such as teaching *Keyishian, supra*; *Whitehall v. Elkins*, 389 U.S. 54 (1967); and state employment *Elfrant v. Russell*, 384 U.S. 11 (1966); *Cramp v. Board of Public Instruction*, 386 U.S. 278 (1961). In none of

these cases has the Court held that an oath requirement *per se* is unconstitutional. Nor has the Court considered an oath taken on behalf of a political party rather than a single individual.

V. OHIO'S DISTRICT AND STATE-WIDE INDEPENDENT CANDIDATE STATUTES ARE VALID AS REASONABLE RESTRICTIONS ON ACCESS TO BALLOT POSITION.

A. Evidence of Four Percent Voter Support Is A Reasonable Condition Of Ballot Position And Not A Denial Of Due Process.

Sections 3513.257 and 3513.258 of the Ohio Revised Code provide independent candidates access to ballot position by way of nominating petitions and are reasonable conditions placed by the State on the right to ballot position in a local or statewide election. It is proper for a state, in the exercise of its election powers, to require: 1) some showing of voter interest in a candidate, and 2) that such support be evidenced at some reasonable date prior to the election. The three-judge District Court below recognized that the above Code sections properly dealt with the latter requirement in *Socialist Labor Party v. Rhodes*, 318 F. Supp. 1262, 1273. It is the former requirement with which this portion of the appeal is concerned.

Ohio Revised Code Section 3513.257 requires that a candidate for Representative to the United States House of Representatives submit a nominating petition containing the signatures of four percent of those voters who voted for governor or presidential electors in the district at the preceding regular state election.

In *Jackson v. Ogilvie*, 39 U.S.L.W. 2456 (N.D. Ill 1971), affirmed without opinion 39 U.S.L.W. 3553 (June 21, 1971), the Court stated:

> "In *Briscoe v. Kusper* 39 U.S.L.W. 2386 (7th Cir. 1970) the court noted 'A state clearly has a substantial interest in administering its own

> local election. This state concern reasonably includes regulation of candidates, and it may well call for limitations on access to ballots by those seeking public office .' " 39 U.S.L.W. 2456 (Feb. 23, 1971)

With this as a basic principle, the court in *Jackson v. Ogilvie, supra,* upheld an Illinois election statute which required a candidate to file a petition signed by at least *five percent* of the district's voters who last voted for the specific office sought. The court, in a *per curiam* decision stated:

> "We determine that the five percent requirement is sufficiently narrow to satisfy due process." 39 U.S.L.W. 2456, 2457.

In accord with this opinion is *Beller v. Adams,* Fla., 235 So. 2d 502 (1970) in which the Florida Supreme Court upheld a 5% (of registered voters) petition requirement for independent candidates to attain ballot position.

Williams v. Rhodes, supra, did not specifically deal with Section 3513.257, Revised Code, and therefore, clearly does not stand as declaring Ohio's four percent requirement unconstitutional. As Justice Edenfield stated in *Jenness v. Fortson,* 315 F. Supp. 1035 (N.D. Ga. 1970), aff. with opinion June 21, 1971 39 U.S.L.W. 4791 (June 21, 1971), another independent candidate case upholding a five percent petition requirement:

> "Clearly, therefore, neither in *Williams* nor elsewhere has the Court ruled that the requirement of the signatures of 5%, or even 15%, of the voters on nominating petition is unconstitutional . . . this Court simply cannot say, as a matter of law, that Georgia's 5% is either unreasonable or that it constitutes invidious, intentional, or purposeful discrimination as charged by the plaintiffs." 315 F. Supp. 1035, 1040.

If the five percent signature requirement as was found constitutional in both *Jenness v. Fortson, supra,* and *Jackson v. Ogilvie, supra,* is constitutional, *a fortiori*

Ohio's four precent is a reasonable and fair limitation on an access to the ballot. A state has a compelling interest to keep the ballot at a reasonable length to avoid voter confusion and miscast votes. Further, this Court in *Williams v. Rhodes, supra,* recognized that the State had a valid interest in having candidates elected by the majority:

> "Concededly, the State does have an interest in attempting to see that the election winner be the choice of a majority of the voters." 393 U. S. 23, 32 (1968).

B. Ohio's Thirty County Requirement Is A Reasonable And Legitimate Requirement For State-Wide Candidates And Does Not Violate *Reynolds v. Sims* Doctrine.

Ohio Revised Code Section 3513.258 also has a four percent petition requirement which is reasonable and fair as discussed in the preceding paragraphs. In addition to the four percent provision, a candidate for state-wide office, such as Governor, must obtain 200 signatures from each of at least 30 counties and no more than one-fourth of the total number of signatures can come from one county. There are 88 counties in Ohio and it seems reasonable that Ohio should require of an independent candidate for state-wide office some degree of state-wide support. A state-wide candidate should not only know the problems and needs of the citizens in all counties of the State, but some representative number of voters from at least a significant geographical, as well as numerical, portion of the state should be backing him in his solutions, programs and ideas. Four percent of the voters from 34% of the counties does not seem unreasonable at all.

A much more stringent provision was declared unconstitutional by the court in *Socialist Workers Party v. Rockefeller* 314 F. Supp. 984 (S.D. N.Y. 1970), affirmed without opinion 91 S. Ct. 65 (1970). The New

York statute with which the court was dealing required a certain number (50) of signatures from each and every county in the state. It is admitted that such a showing of statewide support might be oppressive to an independent candidate. However, the Ohio requirement of 30 out of 88 counties is not oppressive and satisfies a legitimate state inerest. In *Moore v. Ogilvie*, 394 U.S. 814 (1969), the Supreme Court dealt again with the state-wide support for the independent candidate. There this Court, changing from *MacDougall v. Green*, 335 U. S. 281 (1948), held that Illinois law unconstitutional. Illinois required support from 50 of 112 counties, or 49% of the counties. Ohio's law is still less restrictive in requiring support of only 34% of the counties.

It is, therefore, apparent that both Sections 3513.257 and 3513.258 are legitimate instruments used by the State of Ohio to promote and facilitate its interest in protecting the voting public and preserving the one-man/one-vote system of our democracy.

CONCLUSION

A reversal of the District Court below would not run *contra* to this Court's decision in *Williams, supra.* Nor would a reversal run contrary to *Hadenott v. Amos,* 394 U. S. 358 (1969) and the rights of freedom of association, and the rights of voters to cast their votes effectively. Ohio has reduced the barriers placed on independent candidates in contrast to what Alabama did in *Hadnott, supra.* A careful examination of the entire statutory pattern now before the Court will reveal no unjustified discrimination in the selection of public officials which could undermine the legitimacy of representative government. *Kramer v. Union Free School District #15,* 395 U.S. 621 (1969). This is especially true in cases involving states which "have long been held to have broad powers to determine the conditions under which the right of sufferage may be exercised." *Evans v. Corman,* 398 U.S. 419 (1970). It may now be said that any differences in the statutes in treatment are in favor of third party candidates or are in the category of the minor differences which the Equal Protection Clause permits. *Lyons v. Davoren,* 402 F. 2d 841 (1st Cir. 1968). The new statutes treated herein, as well as the old, are still entitled to the presumption of constitutionality. *Alaska Packers Association v. Industrial Accident Commission of California,* 294 U.S. 532 at 543 (1935). This is true with regard to election statutes also. *Wood v. Putterman,* 316 F. Supp. 513 (D. Conn., 1970).

In view of the liberalization of Ohio election statutes (provision for write-in candidates, reduction of the signature requirement for the Presidential ballot by 8% and for independent candidates for all offices by 3%, provision for filing of Presidential Electors by petition rather than by party convention, and other new provisions) this Court should rveerse the District Court below and find

that the combination of all election statutes, §§3517.01, 3505.10, 3517.02, 3517.03, 3517.04, 3513.12, as well as the portions of §§3513.257 and .258, are constitutional and consonant with the First and Fourteenth Amendments to the United States Constitution.

Respectfully submitted,

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July 8, 1971

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-21

SOCIALIST LABOR PARTY, *et al.*,

Appellants,

—v.—

JOHN J. GILLIGAN, GOVERNOR, STATE OF OHIO, *et al.*,

Appellees.

No. 70-56

HELEN A. SWEETENHAM, *et al.*,

Appellants,

—v.—

JOHN J. GILLIGAN, GOVERNOR, STATE OF OHIO, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

BRIEF OF APPELLANTS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-21

SOCIALIST LABOR PARTY, *et al.*,

Appellants,

—v.—

JOHN J. GILLIGAN, GOVERNOR, STATE OF OHIO, *et al.*,

Appellees.

No. 70-56

HELEN A. SWEETENHAM, *et al.*,

Appellants,

—v.—

JOHN J. GILLIGAN, GOVERNOR, STATE OF OHIO, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

BRIEF OF APPELLANTS

Jurisdiction

These cases, brought for declaratory and injunctive relief, involve questions of the constitutionality of certain election laws of the State of Ohio. In the *Socialist Labor Party* case, hereinafter also called the *political party case,*

the jurisdiction of the District Court was invoked under 42 U.S.C. Sections 1981, 1983 and 1988; 28 U.S.C. Section 1343 (3) and (4); 28 U.S.C. Sections 2201 and 2202; and the First and Fourteenth Amendments of the Constitution of the United States. In the *Sweetenham* case, hereinafter also called the *independent candidates case,* the jurisdiction of the District Court was invoked under 42 U.S.C. Section 1983; 28 U.S.C. Section 1343 (3) and (4); 28 U.S.C. Section 2201; and the following provisions of the Constitution of the United States: Article I, Section 2; Article IV, Sections 2 and 4; and the First, Ninth and Fourteenth Amendments.

The order of the District Court in these cases was filed on July 29, 1970 and amended on July 31, 1970. Cross-appeals were filed by the plaintiffs and the defendants in both cases from the District Court order granting some and denying some of the relief requested. The Board of Elections of Cuyahoga County, Ohio, which was named a party-defendant in *Sweetenham,* the *independent candidates case,* and which participated in the District Court proceedings, did not file a notice of appeal. Subsequent to the filing of notices of appeal, the defendant John Gilligan, Governor of the State of Ohio, was substituted for James A. Rhodes, and William J. Brown, Attorney General of Ohio, was substituted for Paul W. Brown.

The jurisdiction of this Court is invoked under 28 United States Code, Section 1253. This Court's jurisdiction is sustained by *Williams* v. *Rhodes,* 393 U.S. 23.

Opinions Below

The opinion and order of the District Court in both of these cases are reported at 318 F. Supp. 1262 (S.D. Ohio 1970) and are included in the Appendix at pp. 46-69. The Amended Order of the District Court may be found in the Appendix at pp. 70-71.

Statutes Involved

The numerous provisions of the Ohio election laws involved in this appeal are set forth in the brief of the defendants at 3-26.

Questions Presented

1. Is the inter-connected totality of Ohio election laws, disapproved in *Williams* v. *Rhodes* and with minor modifications again before the Court, unconstitutional?

2. Are the various Ohio statutes dictating party organization unconstitutional?

3. Does the Ohio political party test oath requirement, broadly, vaguely, without due process and unequally, abridge the right to free speech and political association?

4. Is the Ohio statute which prescribes a seven percent signature requirement for new and small party inclusion on the ballot unconstitutional?

5. Is the Ohio statute which prescribes a four per cent signature requirement for independent party inclusion on the ballot unconstitutional?

6. Is the Ohio statute which requires an independent candidate for state-wide office to file petitions containing signatures of two hundred electors from each of thirty counties, and providing that no more than one-fourth of the total signatures required to be obtained by an independent candidate be obtained from any one county, unconstitutional?

Statement of the Cases

On January 28, 1970, these two actions were filed in the United States District Court for the Southern District of Ohio challenging various Ohio election laws. Both cases sought declaratory and injunctive relief against further enforcement of the challenged statutes, and particularly injunctive relief against enforcement of the statutes so as to deny access to the ballot. In No. 70-21, the complainants were the Socialist Labor Party, its Ohio State Committee, and one of its officers. In No. 70-56, the complainants were an independent candidate for governor, an independent candidate for United States Representative, and a voter.

On July 16, 1970, a three-judge court heard these cases, which were consolidated. On July 29, 1970, the court issued an order which, as thereafter amended to correct a clerical error, permanently enjoined the defendant state officials from enforcing those portions of the various statutes challenged which were held unconstitutional. The court further ordered that the candidates of the Socialist Labor Party for governor and for United States Senator be placed on the ballot for the November, 1970 general election, accompanied by the name of the Socialist Labor Party.

The district court invalidated provisions of the Ohio election laws. The following statutes or portions thereof were held unconstitutional: §3517.01 as amended (7% requirement for political party ballot status); §3505 as amended, and §3513.12 as amended (requiring national party conventions for party candidates for presidential nomination); §3513.11 (requiring state conventions and state-wide party organization); §§3517.02, 3517.03, and 3517.04 (specifying the organizational structure of a party); §3513.257 and §3513.258 (4% requirement for independent candidate ballot status); and §3513.258 (requiring that an independent candidate for state-wide office file petitions containing signatures for at least 200 hundred electors from each of thirty counties, and that no more than one-fourth of the total signatures required be obtained from any one county).

Cross-appeals were filed in both cases. The defendants appealed from the voiding of Ohio election laws. The plaintiffs in the Socialist Labor Party case (No. 70-21) appealed from the decision below upholding, as construed, the constitutionality of the political party loyalty oath requirement (§3517.07). The defendants have also appealed from that ruling to the extent that it impugned the facial constitutionality of the loyalty oath requirement. The plaintiffs in the independent candidates case (Oct. 1970 No. 790) appealed the decision below upholding the validity of Ohio's early requirement for filing independent candidate petitions ninety days "before the first Tuesday after the first Monday in May immediately preceding such general election" (§§3513.257 and 3513.258).

On March 29, 1971, the Court noted probable jurisdiction in No. 70-56, in which the state appealed from the

rulings against it in both cases. Probable jurisdiction was also noted in No. 70-21, in which the Socialist Labor Party appealed from the decision below upholding the constitutionality of the loyalty oath for political parties. No action has been taken by the Court on the appeal in No. 70-15, in which the plaintiffs in the independent candidate case appealed from the decision upholding the validity of Ohio's early deadline requirements.

Summary of Argument

In *Williams* v. *Rhodes,* 393 U.S. 23, 34, this Court ruled the "the totality of the Ohio restrictive [election] laws taken as a whole imposes a burden on voting and associational rights which we hold is an invidious discrimination in violation of the Equal Protection Clause.". See *Jenness* v. *Fortson,* 29 L.Ed.2d 554, 560. Despite minor cosmetic modifications, the "entangling web of election laws" remains virtually unchanged. In order to dispel the restrictive cloud over the Ohio election processes, and to eliminate present and future effects of past discrimination, a prophylactic remedy is required. The defendants should be barred from enforcing the election laws before the Court. They should be instructed to go to the Ohio legislature for an entirely new election code.

The various Ohio statutes which govern party organization and nomination processes were before this Court in *Williams* v. *Rhodes.* These provisions are ripe for final adjudication. The decision of the court below should be affirmed as to these laws on the ground that they clearly violate the freedom of political association and deny the equal protection of the laws. Further, the court below should be affirmed on the grounds of *res judicata.*

Section 3517.07 of the Ohio election law conditions political party access to the ballot on the execution of a test oath. This provision is unduly broad in derogation of the First Amendment. It is also unduly vague and uncertain in violation of the Due Process Clause. Further, it does not provide for procedural due process of law and illegally places the burden of proving loyalty on the political party. Finally it unequally, and without cause, exempts the Democratic and Republican Parties from the test oath requirement.

After the decision in *Williams* v. *Rhodes*, the Ohio legislature reduced from 15 to 7 per cent the petition requirement for new or small political parties to be included on the ballot. At the same time, the petition requirement for independent candidates was reduced from 7 to 4 per cent. These reductions are unavailing. The Ohio requirement does not become insulated by this Court's decision in *Jenness* v. *Fortson*, 29 L.Ed.2d 554. Unlike the Georgia law validated in *Jenness*, Ohio's petition requirements must still be evaluated within the "totality" or "entangling web of election laws" already disapproved by this Court in *Williams* v. *Rhodes*, 393 U.S. at 34.

The requirements of Section 3513.258, that an independent candidate for state-wide office file petitions containing signatures of 200 electors from each of thirty counties and that no more than one-fourth of the total signatures required to be obtained by an independent candidate come from any one county, deny equal protection of the laws. *Moore* v. *Ogilvie*, 394 U.S. 814.

ARGUMENT

I.

The Ohio election laws now before the Court were properly declared unconstitutional and enjoined as an inter-connected "totality" which perpetuates the unlawful "burden on voting and associational rights" disapproved by this Court in *Williams* v. *Rhodes*.

Williams v. *Rhodes*

Several of the provisions of Ohio law challenged here in No. 70-21 were also before the Court three years ago in *Williams* v. *Rhodes*, 393 U.S. 23.[1] In that case, the Court said: "The State of Ohio in a series of election laws has made it virtually impossible for a new political party, even though it has hundreds of thousands of members, or an old political party, which has a very small number of members, to be placed on the state ballot . . . " 393 U.S. at 24. Considering all the provisions together, the Court held that, "the totality of the Ohio restrictive laws taken as a whole imposes a burden on voting and associational rights which we hold is an invidious discrimination, in violation of the Equal Protection Clause." 393 U.S. at 34. Mr. Justice Douglas, and Mr. Justice Harlan, in separate concurring opinions, expressed their view that Ohio's election laws were an unconstitutional infringement upon freedom of association. 393 U.S. at 35, 41.

The majority and concurring views were not inconsistent. As Justice Black observed for the Court, the overall effect

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[1] The following Ohio statutes, challenged in No. 70-21, were also expressly treated in the opinion of the Court in *Williams* v. *Rhodes*: §§3517.01, 3517.02, 3517.03, 3517.04, 3505.10. Mr. Justice Douglas, concurring, cited in addition the following provisions, which are again before the Court: §§3513.11, 3515.12.

of the Ohio election laws was to "place burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms." *Williams* v. *Rhodes,* 393 U.S. at 30. Under both the equal protection and freedom of association approaches, the State of Ohio did not prevail because it could not demonstrate any compelling state interest to justify its egregious invasion of voting and associational rights, especially in view of the availability of less drastic means to secure any legitimate state interests. *Williams* v. *Rhodes,* 393 U.S. at 31; see, e.g., *Phoenix* v. *Kolodziejsky,* 399 U.S. 204, 209; *Evans* v. *Cornman,* 398 U.S. 419, 422; *Harper* v. *Virginia State Board of Elections,* 383 U.S. 663, 670; *Reynolds* v. *Sims,* 377 U.S. 533, 561-62; *Schneider* v. *Smith,* 390 U.S. 17, 24; *United States* v. *Robel,* 389 U.S. 258, 268; *NAACP* v. *Alabama,* 377 U.S. 288, 307-08; *NAACP* v. *Button,* 371 U.S. 415, 438; *Shelton* v. *Tucker,* 364 U.S. 479, 488.

Ohio has not complied with the rulings in *Williams* v. *Rhodes.* Instead of performing the major operation which is necessary to neutralize the unconstitutional "totality," the Ohio legislature made only minor cosmetic modifications in the election laws. Having retained the overall restrictive statutory scheme, the defendants nevertheless contend that a new statutory scheme is before the Court, and therefore *Williams* v. *Rhodes* does not control. Further, the defendants have manifested that unless this Court grants prophylactic relief, they will continue to frustrate the mandate of *Williams* v. *Rhodes.* In their brief in the present cases, the defendants assert that Ohio's election

laws "are presently in the process of being amended further" (Brief for Rhodes, *et al.*, p. 36). (Whether these alleged amendments will relieve the statutory scheme of its constitutional infirmities is left open to speculation.) In addition, at this late date, the defendants have come forward with some novel statutory interpretations, and can be expected to improve upon these until this Court makes it crystal clear that *Williams* v. *Rhodes* requires a complete fracture from past law and practice in Ohio.

The present lawsuits were necessary because the changes in Ohio election laws since *Williams* v. *Rhodes* were utterly insubstantial, thereby continuing in the present the discriminatory effect of the past unconstitutional practices. Indeed, intervention by a federal judiciary was necessary (for a second time in two years), to assure the Socialist Labor Party—plaintiff after all in *Williams* v. *Rhodes*—effective participation in the November, 1970 general election in Ohio.

Recent Modification of Ohio Election Law

The following changes were made in the Ohio election laws after the decision in *Williams* v. *Rhodes*. First, write-in candidates are now allowed under Ohio law (§§3505.03, 3505.10, 3513.041, 3513.10). However, the voter's privilege to write-in candidates is not untrammeled. For his votes to be counted, a write-in candidate must formally declare his "intent to be a write-in candidate" at least twenty days preceding the election, and he must pay a filing fee (§§3513.041, 3513.10).

Second, candidates and voters are no longer barred from changing party affiliation, for purposes of participating in primaries, from one election to another—so long as

they change affiliation to a newly organized political party (§§3517.013, 3517.016).

Third, in order to be included on the printed ballot, independent candidates now must submit nominating petitions containing the signatures of 4, rather than 7, per cent of the voters in the last gubernatorial or presidential election. However, they remain subject to a stringent early deadline requirement (§§3515.252, 3512.256, 3513.257, 3513.258).

Fourth, independent candidates may now be presented for the offices of President and Vice-President of the United States (§3513.258). In the past, independent candidates could be offered for many other offices, but not for the above two.

The final change concerns formal recognition as a political party. Now any group of voters whose candidate received less than seven, rather than less than ten, per cent of the vote at the last gubernatorial or presidential election, and which desires recognition as a political party, must file petitions with a number of signatures equal to seven per cent of the votes cast in the last election for governor or president, not merely for governor (§3517.01). Although this modification has reduced the signature requirement from the fifteen percent required at the time of *Williams* v. *Rhodes,* Ohio's political party signature requirement continues to be the largest in the country. See *Williams* v. *Rhodes,* 393 U.S. 23, 47 n. 10 (Harlan, J. concurring); Record in No. 70-21, Appendix D to Memorandum in Support of Plaintiffs' Motion for Summary Judgment. In addition, the filing deadline for the petition has been increased from "ninety days before an election" to one hundred and twenty days before the next primary election.

Timely filing of a petition containing the requisite number of signatures is not itself sufficient to enable a new or small party to place its candidates on the ballot. A second requirement, unchanged since *Wilkams* v. *Rhodes*, compels a political party to hold a primary (§§3513.01, 3517.01). And there are several statutes governing party organization which must be complied with. The party must elect a central committee composed of two members from each congressional district, elect a county central committee for each county (§§3517.02, 3517.03, 3517.04),[2] and elect delegates and alternates to a national convention (§3513.12). Further, each political party must hold a state convention composed of, in addition to candidates, 500 delegates (§3513.11). Finally every party, not on the ballot in each national and gubernatorial election since 1900, must execute a political test oath which clearly violates the constitutional protections of free speech and due process of law (§3517.07).

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[2] In their brief, for the first time the defendants contend that these provisions come into play only *if* a party voluntarily decides to have a controlling committee. Brief at 40-41. If the defendants are correct, the direct burden of these particular provisions does not fall upon the plaintiffs. But this novel construction of the statute is contrary to the findings of fact below, and contrary to the findings of this Court in *Williams*. Further, the defendants point to no state court decision so interpreting these provisions. Indeed, the highest court of Ohio has treated similar election laws as mandatory. *State ex rel. Beck* v. *Hummel*, 150 Ohio St. 127, 80 N.E.2d 899 (1948). Further, under Ohio law, the state attorney general can make no binding construction of statutes. *Anderson* v. *Wolf*, 17 O.L.A. 161 (Ohio App. 1934). Cf. *Whitehill* v. *Elkins*, 389 U.S. 54. Where critical First and Fourteenth Amendment rights are at stake, individuals and political parties cannot be made to rely on the sufferance of government officials, whose tenure is not certain and whose construction of statutes is not immutable. See, e.g., *Baggett* v. *Bullitt*, 377 U.S. 360.

Recent Modifications Have Not Changed the Unconstitutional "Totality" of the Ohio Election Law

When considered separately, numerous of the provisions of the Ohio election laws again before the Court suffer quite specific constitutional defects. These will be elaborated *seriatim* in the subsequent points of argument presented in this brief. Suffice it to say, for the present, these individual defects rendered the "totality", so resoundingly scored in *Williams* v. *Rhodes*, all the more tainted. Indeed, as will appear subsequently, it is singularly difficult to evaluate the constitutional defects of the separate provisions in isolation from the whole. As this Court characterized them in *Williams* v. *Rhodes*, Ohio's election laws are "an entangling web." 393 U.S. at 34. And, distinguishing the Ohio and Georgia election laws in *Jenness* v. *Fortson*, 29 L.Ed.2d 554, 560, Mr. Justice Stewart observed for a unanimous Court that:

> The Court's decision with respect to this 'entangling web of election laws' was unambiguous and positive. It held that 'the totality of the Ohio restrictive laws taken as a whole imposes a burden on voting and associational rights which we hold is an invidious discrimination, in violation of the Equal Protection Clause.' 393 U.S. at 34.

The "totality" of Ohio election laws is virtually unchanged. (For the elaboration of distinguishing details, most of which remain in the Ohio scheme, deemed persuasive in the differentiation made in the *Jenness* case, see 29 L.Ed.2d at 558-60.) Regardless of the changes in some details, the deleterious effects of Ohio's "entangling web of election laws" have not been dissipated by the few changes.

Nor could they be. The purpose of these laws was to foreclose minor parties and independent candidates in Ohio. E.g., *Williams* v. *Rhodes,* 393 U.S. at 31-32; *id.* at 47 n. 9 (Harlan, J. concurring).

For nearly two decades, these laws, more limiting than others observed in the history of our nation (see *Williams* v. *Rhodes, supra; Jenness* v. *Fortson, supra*), have controlled all access to Ohio elections. From the enactment of these laws, following the 1948 presidential election (*Williams* v. *Rhodes,* 393 U.S. at 47 n. 9 (Harlan, J. concurring)), until the 1968 presidential election, Ohio has had neither third party candidates nor independent candidates on the ballot. Furthermore, write-ins were not permitted.

Obviously, the political climate fostered by Ohio's restrictive elections laws was stultifying to the development of new or small political parties, and of independent candidacies. The political climate of Ohio was not free, and it remains unfree. The people, deprived for so long of the Georgia example of successful independent and third party candidates, see *Jenness* v. *Fortson,* 29 L.Ed.2d at 561-62, cannot be expected to accept readily third party or independent candidates.

Those third parties that have had the fortitude to survive the long drought, such as the Socialist Labor Party, have virtually withered. By 1968, the Socialist Labor Party had only 105 members. Although it had continued to attempt to participate in Ohio political processes, its efforts have been severely hampered because the futility of gaining the ballot made recruitment of supporters more difficult. In other words, a downward spiral has emaciated the Party. Independent candidates are in the same position.

The Ohio legislative response to this Court's decision in *Williams* v. *Rhodes* has not purged the restrictive political atmosphere of the state. The election processes have not been unfettered. A sharp and abrupt departure from past practice and law is necessary to free Ohio voters, political parties, and independent candidates from the continuing unconstitutional effects of the post-1948 laws and practices. In their "totality", the Ohio election laws now before the Court must be struck down; the defendants must be constrained to go to the Ohio legislature for a completely new election code.

There Must Be a Complete Fracture, Displacing Ohio's Old Election Law to Enforce This Court's Judgment in Williams v. Rhodes

The remedy plaintiffs request is supported by numerous decisions in analogous fields. Especially in cases involving denial of the equal protection of the laws, this Court has frequently required relief designed to eliminate not merely present overt discrimination, but also the present and future effects of past discriminatory practices.

Louisiana v. *United States*, 380 U.S. 145 was a voting rights case. Over a period of time, the percentage of registered voters who were black dropped from 44% to less than 1%, and later rose to only 15%. 380 U.S. at 147-49. A central issue in the case was the remedy. The district court concluded that it was insufficient merely to enjoin unfair application of the so-called "interpretation test" which was a key tool in the state's discrimination. 380 U.S. at 150 n. 9. Consequently, the district court enjoined all future use of this test, and also enjoined use of a newly enacted, different type of test, unless all voters were first put to the new test. 380 U.S. at 150-51. This Court affirmed, observing that: "We must bear in mind that the court has not merely

the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as ban like discrimination in the future." 380 U.S. at 154.

Ohio's attempt to comply as little as possible with this Court's decision in *Williams* v. *Rhodes* should be treated in the same fashion. The relevant Ohio election laws should be struck down as a "totality", and access to the ballot should be declared completely open until such time as the Ohio legislature adopts new elections laws which do not perpetuate in the present and the future the effects of past discrimination and inhibition and which apply equally to all political parties and candidates. See e.g., *United States* v. *Duke*, 332 F.2d 759 (5th Cir. 1964) (so-called freezing principle applied to eliminate racial discrimination in access to the vote). See also, *Gaston County* v. *United States*, 395 U.S. 285, where this Court sustained a district court refusal, under the Voting Rights Act of 1965, to reinstate a literacy test. The Court ruled that even though the county had made "significant strides toward equalizing and integrating its school system," past discriminations made impartial administration of literacy test insufficient to protect the rights of black voters. 395 U.S. at 296-97.

The Court has applied the same principle to remedy racial discrimination in education. A decade and a half after *Brown* v. *Board of Education*, 347 U.S. 483; 349 U.S. 225, this Court declared:

> Brown II was a call for the dismantling of well-entrenched dual systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution. School Boards such as the respondent

> were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. *Green* v. *School Board of New Kent County*, 391 U.S. 430, 437-38.

Thus it became clear that affirmative steps were to be taken not merely to eliminate active discrimination in the present and future; affirmative steps were also required to eliminate the present and future effects of past discrimination.

In *United States* v. *Montgomery County Bd. of Educ.*, 395 U.S. 225, the Court approved a decree setting mathematical ratios of white to black teachers, and mandating other affirmative remedies to ameliorate the present and future effects of past discrimination, much of which occurred after the rulings in *Brown* v. *Board of Education*. During the Court's last term, this principle was applied to pupil busing decrees designed to assure racial balance within the public schools' populations. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 28 L.Ed.2d 554; *Davis* v. *Board of School Commissioners of Mobile County*, 28 L.Ed.2d 577. And the same principle has been applied, under Title VII of the Civil Rights Act of 1964, to invalidate and then completely re-order job seniority systems which tended to perpetuate past racial discrimination in employment. E.g., *Taylor* v. *Armco Steel Corp.*, 429 F.2d 498 (5th Cir. 1970); *Local 189, United Papermakers* v. *United States*, 416 F.2d 980 (5th Cir. 1969); *Norman* v. *Missouri Pacific Railroad*, 414 F.2d 73 (8th Cir. 1969); *Quarles* v. *Philip Morris, Inc.*, 279 F. Supp. 505 (E.D. Va. 1968). See *Griggs* v. *Duke Power Co.*, 28 L.Ed.2d 158.

The case of *NLRB* v. *Tappan Stove Co.*, 174 F.2d 1007 (6th Cir. 1949) illustrates application of the principle in another context. A company union, legal prior to passage of the National Labor Relations Act, was succeeded after passage of the Act by an organization no longer in fact company dominated. The Labor Board, affirmed by the court, found that the efforts to disestablish the company union were unavailing:

> In a situation of this type, our first inquiry is whether or not the labor organization which purports to act as the employees' bargaining agent is a successor to or a continuation of the labor organization dominated and assisted by the employer. For the effect of an employer's coercion inherent in the maintenance of a dominated union ordinarily survives the illegal organization. To dispel this coercive effect, if a succeeding organization is set up, there must be a complete break or fracture between the two organizations. 174 F.2d at 1012-13; accord, *NLRB* v. *Southern Bell Telephone & Telegraph Co.*, 319 U.S. 50.

The Labor Board and the court found the break between the two organizations insufficient, and the company was enjoined from recognizing the successor organization, or any successor thereto.

There has been no adequate "break or fracture" between the election laws declared unconstitutional by this Court in *Williams* v. *Rhodes* and the laws now before this Court. They all should be declared unconstitutional and their enforcement should be enjoined.

II.

The various statutes dictating party organization are unconstitutional under the Equal Protection Clause and also under the First Amendment.

A group of the Ohio statutes challenged in No. 70-21 minutely regulates the organization of a political party, and requires a party to hold national and state conventions. All but one of these laws were part of the "entangling web of election laws" before the Court in *Williams* v. *Rhodes,* 393 U.S. at 34. "Indeed, a large reason for the Court's invalidation of the Ohio election laws in *Williams* v. *Ohio, supra,* was precisely that Ohio *did* impose just such requirements on small and new political organizations." *Jenness* v. *Fortson,* 29 L.Ed.2d at 562. Most of these requirements remained unamended, or if amended, the amendments do not cure the defects.

Collectively and singly, the Ohio party organization requirements continue to be a straitjacket which forces political parties to conform, without justification, to a single model. They penalize political parties for being small, non-national, new and innovative. They deny such political parties, their members, and sympathetic voters important First and Fourteenth Amendment rights. As observed by the Court in *Jenness,* "sometimes the grossest discrimination can be in treating things that are different as though they were exactly alike, a truism well illustrated in *Williams* v. *Rhodes, supra.*" 29 L.Ed.2d 562.

A. Sections 3505.10 and 3513.12, which require that a political party hold a national convention, composed of delegates and alternates elected at a primary, and nominate candidates for President and Vice-President of the United States, are unconstitutional.

Sections 3505.10 and 3513.12 require a political party to hold a national convention. The delegates and alternates to the convention must be elected at a party primary. At this national convention, the party must nominate candidates for President and Vice-President of the United States.

The defendants, for the first time, now assert that §3513.12 is "optional." Brief at 40-42. If they are correct, the plaintiffs are relieved of these particular burdens. But the defendants' assertion is unavailing. The defendants are powerless to make binding constructions of the Ohio statutes, and the plaintiffs cannot be made to rely upon the defendants' constructions, to the peril of their First and Fourteenth Amendment rights. Further, on its face the statutes are, and they have heretofore been treated as, mandatory.[3] The Complaint in No. 70-21 clearly alleged that both sections were mandatory,[4] and these allegations were admitted in the defendants' answer.[5]

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[3] See note 2, *supra*, p. 12.

[4] The complaint alleged in paragraph 14(b) that "Delegates and alternates must be elected at the primary to a national convention, Section 3505.10, Ohio Revised Code." In paragraph 15, the complaint alleged, "Plaintiffs say that section 3513.12, Ohio Revised Code, . . . requires a political party to run a candidate for president of the United States; that it requires an Ohio political party to hold a national convention . . . " (App. 10-11).

[5] The defendants admitted the "provisions of statutes enumerated in subparagraphs (a) through (c) of paragraph 14." The defendants also admitted the allegation of paragraph 15, except for the conclusion that Section 3513.12 is "an unwarranted and unnecessary intrusion into the internal affairs of political parties" (App. 18).

These requirements violate the Equal Protection clause. These statutes discriminate against new and small parties by permitting only national parties to appear on state election ballots. The effect of this discrimination is severe; non-national parties are denied access to the ballot; new or small parties are unduly discouraged; parties which seek more flexible structure or even more democratic or participatory alternatives in the nomination process are in effect outlawed. These requirements also infringe upon freedom of association by limiting the kinds of political groups which may participate effectively—*i.e.*, as political parties—in Ohio elections.

The burdens and discrimination imposed by these requirements cannot be justified by any compelling state interest. Indeed, the defendants do not even attempt to suggest that any substantial state interest supports these requirements. (It is obvious that the state's only interest is an unconstitutional one—to preserve the electoral monopoly of the traditional two national parties. See, e.g., *Williams* v. *Rhodes*, 393 U.S. 31-32; *id.* at 43 n. 9 (Harlan, J. concurring).) Instead, the defendants contend that these requirements are not, in fact, burdensome.

Obviously, however, they are quite burdensome. Local parties, small parties, and parties which have no desire to submit presidential and vice-presidential candidates in a given year, in effect are outlawed from Ohio elections. The only way to avoid these convention and nomination requirements is to relinquish party identification and to run as, or to submit, independent or write-in candidates. This alternative is inadequate protection for the right to political association. In *Williams* v. *Rhodes*, this Court concluded that these same requirements concerning a na-

tional convention were "substantial . . . burdens" for candidates for national office and for small political parties. 393 U.S. at 25 and n. 1. It follows, *a fortiori,* that these are also unduly onerous obstacles for candidates for state office. Thus, the court below correctly concluded that these requirements violate the First and Fourteenth Amendments.

B. Section 3513.11, which requires that a political party hold a massive state convention, is unconstitutional.

Section 3513.11 requires a political party to hold a state convention every other year. The convention which is contemplated is a massive affair, composed of the following three groups: (1) the party's candidates; (2) its various committees; and (3) 500 delegates apportioned among the counties of Ohio. For precisely the same reasons as discussed in the preceding sub-section of the *Argument,* this provision, too, denies the plaintiffs the equal protection of the laws, and violates their right to political association. And since, in *Williams* v. *Rhodes,* this Court already held that a party, whose candidate was seeking a national office, was not obligated to hold a national convention, by parity of reasoning, a party whose candidate is seeking state office can not be obligated to hold a state convention.

C. Sections 3513.02, 3517.03, and 3517.04, which require a political party to follow detailed procedures relating to its internal organization, are unconstitutional.

Provisions of the Ohio election laws require that all political parties have controlling committees which are to be elected by direct vote of the members (§3517.02) at the primary (§3517.03); that the controlling committees be composed in a certain fashion (§3517.03); and that the com-

mittees meet at a certain time after the primary (§3517.04). Like the provisions concerning national and state conventions, these provisions secure no paramount state interest, they are unduly burdensome, and they are unreasonable requirements.

These very same provisions were before this Court in *Williams* v. *Rhodes,* 393 U.S. at 25 n. 1, and have not been amended since. They were part of the restrictive network of laws condemned by that decision. In fact, the three-judge district court below found that these sections were declared unconstitutional in *Williams* v. *Rhodes,* and concluded that it is "unnecessary to decide or declare anything with respect to [their] unconstitutionality. . . ." (App. 51). The Court issued a permanent injunction against their enforcement (App. 69).

The defendants do not suggest any justification for these requirements (Brief at 40-41), nor can any be found. Instead, the defendants, at this late date, argue that "There was no evidence that the state was trying to enforce them" (Brief at 40). But, since the mandatory nature of these sections was clearly alleged and set out in the Complaint in No. 70-21 (Complaint para. 14(a), App. 10), and was admitted by the defendants (App. 18), it was not necessary to allege further that the statutes were being enforced.[6] Surely, this litigation, in effect already twice before this Court, should not be protracted further by the approach the defendants are now pressing.

In *Williams* v. *Rhodes,* this Court declared beyond any doubt that plaintiffs' challenge is properly lodged against the "totality" of Ohio election laws which deny them status

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[6] See note 2, *supra,* p. 12.

as a political party or proper access to the ballot, thereby unequally depriving them of critical First and Fourteenth Amendment rights. It is much too late in the day for the defendants to argue that plaintiffs must take on the Ohio election laws, step-and-law by step-and-law at a time. Indeed, the approach being proposed by the defendants could well place the plaintiffs in the position of never being able fully to vindicate their rights. *Williams* v. *Rhodes*, 393 U.S. at 27-28; *id.* at 63-66 (Warren, C.J., dissenting), where the plaintiffs were denied extraordinary relief because delays in litigation made such relief unduly burdensome on the state's administration of the 1968 election.

These provisions are properly before the Court and ripe for adjudication now. Cf. *Griswold* v. *Connecticut*, 381 U.S. 479. Because they seriously invade, without constitutional cause, the plaintiffs' First and Fourteenth Amendment rights, the order of the district court enjoining the defendants from enforcing these provisions should be affirmed.

III.

Section 3517.07 conditions political party access to the ballot on execution of a test oath without due process of law and unequally abridges plaintiffs' right to free speech and political association.

A. The oath requirement violates the First Amendment on its face.

By its terms, §3517.07 conditions party access to the ballot on the making of:

> an affidavit . . . under oath stating that it does not advocate, either directly or indirectly, the overthrow, by force or violence, of our local, state or national government; that it does not carry on any program of sedition or treason by radio, speech or press; that it has no connection with any foreign government or power; that it has no connection with any group or organization so connected, or so advocating, either directly or indirectly, the overthrow, by force or violence, of our local, state or national government or so carrying on a program of sedition or treason by radio, speech, or press . . .

In *Reynolds* v. *Sims*, 377 U.S. 533, 555, 562 (1964), this Court said that "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government," and that "The right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights . . ."

Nowhere do those admonitions assume more concrete proportion than when a state presumes to require a politi-

cal party to disclaim stated beliefs as a condition of access to the ballot. Professor Thomas I. Emerson says "Qualifications for access to the ballot grounded upon conduct otherwise protected as expression would seem to present the clearest possible case for application of the full protection rule [of the First Amendment]. It is difficult to see how the social interest in internal security is served by exclusion of a political party from the political process. On the contrary, the danger to the state or nation would surely be enhanced by denying to any party or group the possibility of redressing their grievances through democratic procedures." *The System of Freedom of Expression* 202. See *Williams* v. *Rhodes, supra,* at 38-42 (Douglas and Harlan, JJ., separately concurring).

To deny access to the ballot to any party which advocates forceful overthrow, sedition or treason not only flies in the face of the First Amendment, *infra,* pp. 27-37, it is pragmatically unsound. Any political party which might advocate the use of force to seize power does so not because of its attachment to violence as such but as an instrument to achieve its political objectives. If it believes it can achieve those objectives through use of the electoral process, it is less likely to advocate, no less generate, violence. But the more such a party is shut out of a functioning parliamentary system, the more likely will it resort to force or to its advocacy.

Under our system of representative government, political parties can advocate any political objectives in which they believe. Likewise, the electorate should have the unhampered opportunity at the polls to cast their votes for the widest variety of political programs. At rock-bottom, the act of casting a ballot is perhaps the ultimate purpose behind the exercise of First Amendment rights. What good

is it to be able to express one's views as freely as possible if there is no ultimate opportunity to try to elect a government which shares those views? Thus, to close out any political party from the electoral process because some would describe its goals as seditious or treasonous, destroys the central function of the First Amendment. For that reason, oaths such as required by Sec. 3517.07 should be struck down on their face.

B. The oath requirement is overbroad.

The court below found this provision "overly broad on its face in that it attempts to prohibit mere advocacy" (App. 61). Nevertheless, it upheld the provision on the ground that "the Ohio Supreme Court, in *State ex rel. Beck* v. *Hummel,* 150 Ohio St. 127 (1948) construed the section narrowly" (App. 61). Specifically, the court below held that the section:

> narrowly construed to require an oath that (1) the party is not engaged in an attempt to overthrow the government by force or violence, (2) the party does not carry on a program of sedition or treason as defined by the criminal law and (3) the party is not knowingly associated with a group attempting to overthrow the government by force or violence, is constitutional (App. 62).

The decision below was incorrect and should be reversed. Despite the defendants' protestations to the contrary (Brief pp. 42-44), the Ohio test oath requirement is unconstitutional on its face. As the court below recognized, "Section 3517.07 is overly broad on its face in that it attempts to prohibit mere advocacy" (App. 61). *Accord,* e.g., *Keyishian*

v. *Board of Regents,* 385 U.S. 589, 599-600; *Brandenburg* v. *Ohio,* 395 U.S. 444, 447-448. It also is overbroad because it bars parties from the ballot because of political associations with foreign governments or "powers" or with organizations advocating violent overthrow, without regard to whether such association is knowing and with the specific intent to promote illegal goals. E.g., *Scales* v. *United States,* 367 U.S. 203, 229; *Elfbrandt* v. *Russell,* 384 U.S. 11, 15-17. (See App. 62, where the three-judge district court below failed to treat the constitutional requisite of specific intent, but limited the Ohio statute to "knowing" association.)

The court below concluded that these facial defects were cured by the Ohio Supreme Court's binding construction of §3517.07. *State ex rel. Beck* v. *Hummell,* 150 Ohio St. 127, 80 N.E.2d 899 (1948). It held that the Supreme Court of Ohio has recognized under this statute "a distinction between attempt and mere advocacy and limited the oath's proscriptive scope to the former" (App. 61).

The court below's determination that the Ohio statute has been narrowed by construction to a constitutional point is incorrect for two reasons.

First, even if the Ohio Supreme Court has so narrowed oath requirement, it still fails to pass constitutional muster. The oath cannot be wrenched from its authorizing statute. Contrary to the opinion of the court below, this Court's decision in *Gerende* v. *Board of Supervisors,* 341 U.S. 56 did not recognize "the constitutionality of an oath requirement for candidates for elective office, if the oath is limited to the assertion that the candidate is:

> not a person who is engaged in one way or another in the *attempt* to overthrow the government by *force*

or violence, and that he is not knowingly a member of an organization engaged in such an attempt. [Emphasis added.]" (App. 62.)

As this Court held in *Whitehill* v. *Elkins*, 389 U.S. 54, the Maryland statute was impermissibly broad and vague on its face, and as construed and applied. In *Gerende*, the Court had merely "accepted the narrowing construction tendered by the Attorney General during oral argument so as to avoid the constitutional issue that was argued." 389 U.S. at 58. Just as in the present case, "[t]hat construction had not yet been fashioned into an oath or certificate when Gerende reached us." 389 U.S. at 58. See Defendants' Brief pp. 42-44.

Second, in *State ex rel. Beck* v. *Hummell*, *supra*, the Supreme Court of Ohio was not distinguishing between an attempt at violent overthrow of government and mere advocacy of violent overthrow. It was making the easier and more gross distinction between an attempt at violent overthrow and advocacy of "an entire change in our form of government . . . " 150 Ohio St. at 137, 80 N.E.2d at 904.

That the Ohio court considered abstract advocacy of violent overthrow to be subsumed within the concept of "attempt," rather than within its concept of protected advocacy is revealed by its statement that, "it is a matter of common knowledge that there are Communists who do not wish to overthrow our government by force but who desire to accomplish the ends they have in view by constitutional methods." *Id.*, 80 N.E.2d at 905. The discussion of these "constitutional methods" makes it clear that the court was speaking (in 1948) of the constitutional amendment process, and that it did not consider advocacy

of violent overthrow to be a protected or constitutional method of effectuating "an entire change in our form of government . . . " And, to this day, the defendants, the state officers charged with enforcing the oath requirement, do not acknowledge that mere advocacy is protected activity for a political party. (Brief pp. 42-44.) *Compare Law Students Civil Rights Research Council* v. *Wadman,* 91 S. Ct. 720, 726-27.

C. The oath requirement is unduly vague.

The oath requirement is also unduly vague, and therefore violates due process of law. Stricter standards of permissible statutory vagueness are to be applied to any statute which has a potentially inhibiting effect upon rights guaranteed by the First Amendment of the United States Constitution. *Smith* v. *California,* 361 U.S. 147; *Cramp* v. *Board of Public Instruction,* 368 U.S. 278; *Baggett* v. *Bullitt,* 377 U.S. 360. The Ohio Statute is cluttered with vague language which requires its invalidation. For the reasons discussed above, no action of the Ohio Supreme Court has cured these defects.

The words "sedition or treason", for example, appear in the statute no less than four times. But the words are nowhere defined or explained. In *Keyishian* v. *Board of Regents,* 385 U.S. 589, 598, this Court found that

> dangers fatal to First Amendment freedoms inhere in the word "seditious". See *New York Times Co.* v. *Sullivan,* 376 U.S. 254, 273-276. And the word "treasonable", if left undefined, is no less dangerously uncertain.

The statute, which is titled "Parties or groups engaged in un-American activities barred from ballot", denies a place on the ballot to any political party or group "which has in any manner any connection with any foreign government or power." What does this phrase mean? If an American political party espoused a program which in part was also being advanced by a foreign government, would that establish the necessary "connection"? In *Feinglass* v. *Reinecke,* 48 F. Supp. 438, 441 (N.D. Ill. 1942) the Court struck an election loyalty oath because of vagueness:

> The other tests prescribed by the statute for determining whether a party may have a place on the ballot also are so vague and indefinite as to make the Act invalid. Such terms as "un-American" and "the political principles of foreign nations" lack the precision required in a statute which affects the rights of a political group to appeal to the electorate. Any political idea that happens to conflict with the economic or political notions of an individual is apt by him to be deemed un-American.

The statute also denies a place on the ballot to any party "advocating, either directly or indirectly, the overthrow by force or violence of our government . . . " or having a "connection with any group or organization . . . so advocating, either directly or indirectly, the overthrow, by force or violence of our . . . government . . . " It is the functional equivalent of a Florida loyalty oath, less ambiguous, less prolix, and more limited in scope than the Ohio one challenged here, which was stricken by a unanimous court in *Cramp* v. *Board of Public Instruction of Orange County,* 368 U.S. 278, because of its undue vagueness and uncertainty. Fatal ambiguity was found in the

Florida statutory requirement that state employees swear that they have never "knowingly lent their aid, support, advice, counsel, or influence to the Communist Party." 368 U.S. at 285. See also, e.g., *Baggett* v. *Bullitt*, 377 U.S. 360; *Whitehill* v. *Elkins*, 389 U.S. 54.

Further evidence of the Ohio statute's vagueness and overbreadth is its failure to deal on its face with the *knowledge* and *intent* of the putative new political party and its leaders who are supposed to sign the oath. What if the party has associations with another group engaged in forbidden advocacy which the party's leaders do not deem illegal or know nothing about? May they later be subject to perjury charges for having signed the oath? The danger is a real one, see *Cramp* v. *Board of Public Instruction*, 368 U.S. 278, 286-287, and even if the signer of the oath is ultimately vindicated, he faces embarrassing publicity at the hands of state officials who use the oath as a bludgeon to keep third parties off the ballot. See *State ex rel. Beck* v. *Hummel*, 150 Ohio St. 127, 80 N.E.2d 899 (1948) (Progressive Party denied place on ballot by Secretary of State because three of its leaders who signed loyalty oath affidavits were allegedly Communists; Secretary of State's publicized findings reversed by Ohio Supreme Court and Party's slate of presidential electors allowed on ballot). This system has been condemned. States cannot require political parties to sign an unduly vague oath at the risk of prosecution for perjury, particularly where the exercise of First Amendment freedoms may thereby be deterred. See, e.g., *Baggett* v. *Bullitt, supra; Whitehill* v. *Elkins, supra.*

D. The oath requirement violates substantive and procedural due process rights by placing the burden of proving loyalty on the political party rather than placing the burden of proving disloyalty on the state.

Even if Ohio's loyalty oath statute were not unconstitutional on free speech grounds or void for vagueness, it should still be invalidated because of its failure to meet other due process imperatives.

By the provisions of the law, the Secretary of State is authorized to investigate the facts appearing in the affidavit and to decide whether or not the party is entitled to a place on the ballot. The Secretary's decision is subject to appeal by any qualified member of the party.

The procedure bears a striking similarity to the one condemned in *Speiser* v. *Randall,* 357 U.S. 513. In *Speiser* a California law conditioned the granting of a special property-tax exemption for veterans upon the execution of a loyalty oath. The oath required was:

> I do not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means, nor advocate the support of a foreign government against the United States in the event of hostilities.

The affidavit requirement was in furtherance of a California constitutional provision which forbade any tax exemption for anyone advocating overthrow of the government by force, violence, or other unlawful means. Under the statute the tax assessor had the duty to investigate the affidavit and determine its truthfulness. If the decision was adverse, review could be had under tax collection proceedings.

Thus, the procedural parallel is perfect. An affidavit is required by the citizen seeking the right or benefit. A state administrative official is given power to determine its validity; review may be had in the courts only following the adverse determination.

The Court in *Speiser* first noted the impact of the legislation in the area of Free Speech. (Surely this impact is increased when, as here, the freedom of association and the right to vote are joined.) The Court then said that for purposes of the opinion only, it would assume that California might deny tax exemptions to persons who engaged in the proscribed speech. Even assuming this, *the statute was held invalid because it placed the burden on the taxpayer* to show that he was entitled to the exemption. The Court explained that:

> Where the transcendent value of speech is involved, due process certainly requires in the circumstances of this case that the State bear the burden of persuasion to show that the appellants engaged in criminal speech.
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> * * * * *
>
> How can a claimant whose declaration is rejected possibly sustain the burden of proving the negative of these complex factual elements? 357 U.S. at 526.
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> * * * * *
>
> [W]e hold that when the constitutional right to speak is sought to be deterred by a State's general taxing program *due process demands that the speech is unencumbered until the State comes forward with sufficient proof to justify its inhibition.* (Emphasis added.) 357 U.S. at 528-9.

Under this holding the same result obtains here. The conclusion of the Supreme Court in *Speiser* is dispositive:

> Since the entire statutory procedure, by placing the burden of proof on the claimants, violated the requirements of due process, appellants were not obliged to take the first step in such a procedure. 357 U.S. at 529.

The *Speiser* v. *Randall* doctrine is controlling here. The Ohio statute contravenes every due process tenet. The Secretary of State unilaterally decides that the new political party is not entitled to a ballot position. He holds no hearings. He does not permit cross-examination. And when the Secretary's decision is announced, it is the Party which must appeal and prove its loyalty. This illegal *ex parte* procedure (see *Carrol* v. *Princess Anne County*, 393 U.S. 175) was expressly approved by the Ohio Supreme Court in *State ex rel. Beck* v. *Hummel*, 150 Ohio St. 127, 80 N.E.2d 899, 905 (1948).

Recently this Court recognized the substantial constitutional burden with which a statute imposing such a procedure is freighted. *Law Students Civil Rights Research Counsel* v. *Wadmond*, 91 S. Ct. 720, 726-27. The Court's most recent decision on the merits in a loyalty oath case, concerned a Florida oath for public employees in the form: "I do not believe in the overthrow of the government of the United States or of the State of Florida by force or violence." The oath was declared unconstitutional because it "falls within the ambit of decisions of this Court proscribing summary dismissal from public employment without hearing or inquiry required by due process." *Connell* v. *Higginbotham*, 91 S. Ct. 1772, 1773.

These principles are applicable to the present case. Cf. *Bond* v. *Floyd,* 385 U.S. 116. Thus the procedures validated by the Ohio Supreme Court are saturated with illegality and should be voided. See *Haskett* v. *Washington,* 294 F. Supp. 912, 916 (D.D.C. 1968) (concurring opinion); *Heckler* v. *Shepard,* 243 F. Supp. 841, 845 (D. Idaho 1965).

E. The oath requirement denies the equal protection of the laws by excepting the Democratic and Republican parties from its ambit.

Even if Section 3517.07, Ohio Revised Code, were not fatally defective for the several reasons discussed above, it would still run afoul of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The last paragraph of Section 3517.07, Ohio Revised Code, exempts from its requirements

> any political party or group which had had a place on the ballot in each national and gubernatorial election since the year 1900.

As abhorrent to constitutional standards as the oath requirement is per se, the exemption above renders it particularly infirm. The double standards favoring the Democratic and Republican political parties, so pervasive throughout the Ohio election code, are once again in evidence. The exemption of the two major parties is absolutely untenable and indefensible and creates a classification bearing no reasonable relationship to any legitimate legislative objective. If Ohio truly wishes to exclude by test oath all political parties which might be "subversive or treasonous," it should exempt none from the requirement. As Mr. Justice Stewart observed in *Jenness* v. *Fortson,* 29

L.Ed.2d 562 n. 25: "Time after time established political parties, at local, state, and national levels, have, while retaining their old labels, changed their ideological direction because of the influence and leadership of those with unorthodox or 'radical' views." The Ohio classification, therefore, is arbitrary, capricious and invidiously discriminatory against plaintiffs and other third parties.

One of the devices to restrict the right of suffrage that has been struck down is the so-called "grandfather clause." *Guinn* v. *United States,* 238 U.S. 347 (1915); *Lane* v. *Wilson,* 307 U.S. 268 (1939). Its resemblance to the exemption clause in Section 3517.07, Ohio Revised Code, is extraordinary. The grandfather clause was designed to limit the right to vote to those with the right paternity; the aim was to prevent Negroes from voting. The exemption clause in Section 3517.07, Ohio Revised Code is not even a sophisticated variation of this device. It is plainly and simply an attempt to deny the right to vote and the right to participate in the electoral process to political minority groups.

IV.

The petition requirements for inclusion of new or small parties and independent candidates on the ballot violate the First and Fourteenth Amendments.

A. Section 3517.01, governing political party access to the ballot, is unconstitutional.

Section 3517.01 creates two alternative routes for a group of voters to obtain recognition in Ohio as a political party. One way is for the group's candidate for governor, or its nominees for presidential electors, to poll at least 7% of

the entire vote cast for such office at the last preceding regular state election. If the group did not poll that number of votes at the last election, it must file petitions containing a number of signatures equal to seven per cent of the number of votes cast for governor or for presidential electors at the last previous election, in order to obtain recognition as a political party. The petitions must declare an intention to participate in the next primary, and must be filed 120 days before the primary. In other words, a group forming a new party, or the members of an established but small party, must file these petitions in the January preceding the November general election in which it desires to participate, and is obligated to hold a primary.

The Socialist Labor Party was unable to satisfy the requirement that it produce petitions with seven per cent of the vote cast in the 1968 election, or 277,179 valid signatures. It was denied a ballot position for the 1970 election until it secured an injunction from the court below. The fact that the Party has only a small number of supporters, at this time, was considered insufficient reason to keep it off the ballot. "[T]o grant the state power to keep all political parties off the ballot until they have enough members to win would stifle the growth of all new parties working to increase their strength from year to year." *Williams* v. *Rhodes,* 393 U.S. at 32.

The validity of the seven per cent requirement cannot be assessed in isolation. Section 3517.01 is not the only barrier to new or small parties enacted by the Ohio legislature. It is just one strand of the entangling web of election laws designed to keep such parties off the Ohio ballot. The other requirements, concerning notably party primaries, conventions, nominating practices, size and organization, have

already been discussed in this brief. The interaction of these other requirements, with the seven per cent provision, distinguishes this case from *Jenness* v. *Fortson,* 29 L.Ed. 2d 554, upon which the defendants heavily rely.

In *Jenness,* this Court sharply distinguished the Georgia statutory scheme, which it validated, from the "totality" of Ohio laws which it invalidated in *Williams* v. *Rhodes.* The Georgia statute enabled an independent candidate, or a nominee of a "political body," to get his name on the ballot only if he has filed a nominating petition signed by 5% of the registered voters. But unlike the Ohio election law, the Georgia requirement constituted the only significant impediment to inclusion on the ballot. This distinction proved persuasive to this Court.

It may be true, as the defendants argue, that 5% of the registered voters is the numerical equivalent of 7% of the votes cast. And it may also be true that, after the decision in *Williams* v. *Rhodes,* Ohio changed its election laws somewhat. But the changes have not been significant. The disparity between Ohio's present election laws, and those of Georgia, remains substantial. First, Georgia provides for unfettered write-in votes, but Ohio does not. See *Jenness* v. *Fortson,* 29 L.Ed.2d at 560. Ohio now permits write-in votes, but a would-be-write-in candidate must file a declaration of intent 20 days prior to the election, and he must pay a filing fee (§3513.041). Second, at the same time Ohio reduced the petition requirement from 15% to 7%, it increased the deadline for filing the petition from ninety days before an election to one hundred and twenty days before the next primary election (§3517.01). Ohio's prior existing early deadline was already constitutionally suspect. *Jenness* v. *Fortson,* 29 L.ed.2d at 560. On the

constitutional infirmity of the present January deadline for the following November general election, see *Beller* v. *Adams,* 235 So.2d 502 (Fla. 1970). Third, unlike Georgia, Ohio still imposes "upon a small party or upon a new party the Procrustean requirement of establishing elaborate election machinery." *Jenness* v. *Fortson,* 29 L.ed.2d at 560. Fourth, except by court order, no third party candidate or independent candidate has been included on an Ohio ballot since 1952, when the present Ohio legislative scheme was completed. By sharp contrast, "The open quality of the Georgia system is far from theoretical. For the stipulation of facts in this record informs us that a candidate for governor in 1966 and a candidate for President in 1968, gained ballot designation by nominating petitions, and each went on to win a plurality of the votes cast at the general election." *Jenness* v. *Fortson,* 29 L.ed.2d at 561 (footnotes omitted).

At this point in time, even if the rest of the entangling web of restrictive Ohio election laws were swept away, the 7% requirement would still be invalid—despite the Court's decision in *Jenness.* The reasons for Ohio's high petition requirement, rather than being legitimate and subordinating, are constitutionally invalid. Quite clearly, Ohio first erected an apparently unprecedented 15% signature requirement and then reduced it, under goad by this Court, relatively so little, in order to secure ballot monopoly of the Democratic and Republican parties. *Williams* v. *Rhodes,* 393 U.S. at 32; *id.* at 41 n. 9 (Harlan, J., concurring). In the light of the history of Ohio's laws, it can hardly be argued today that Ohio still needs one of the nation's highest petition requirements to secure any legitimate interests it can now ascribe.

Under Ohio law prior to 1948, an independent candidate could gain a place on the ballot by producing signatures of one per cent of the number of votes cast at the prior gubernatorial election. Yet since 1901, only once have there even been as many as seven parties on the ballot. 393 U.S. at 47 n. 9 (Harlan, J., concurring). The experience in the other states is similar. Thus, forty-two of Ohio's sister states find their interests satisfactorily served by requirements of one per cent or less. 393 U.S. at 33 n. 9; *id.* at 47 n. 10 (Harlan, J., concurring). As summarized by Mr. Justice Black in his opinion for the Court in *Williams*: "[T]he experience of many states, including that of Ohio prior to 1948, demonstrates that no more than a handful of parties' attempts to qualify for ballot positions even when a very low number of signatures, such as 1% of the electorate, is required." 393 U.S. at 33 (footnote omitted).

On the other hand, Ohio has had experience with a seven per cent requirement. In 1952, the state legislature raised the requirement for independent candidates to seven per cent from one per cent. Since that date, with the exception of the two occasions when courts have ordered the state to place candidates on the ballot, there has not been a single independent or third party candidate on the Ohio ballot. This evidence strongly suggests that a 7% requirement is undue and unnecessarily harsh upon third parties; the state's legitimate interests can adequately be served by a lesser requirement. The decision of the court below voiding the 7% signature requirement should be affirmed. The order should, however, be extended to preclude the defendants from enforcing any signature requirement more onerous than that which was imposed in Ohio up

to and including the 1948 presidential election. Indeed, in the light of Ohio's recent history of restrictive election practices, it would be appropriate to enjoin the defendants from enforcing any signature requirement more onerous than the least restrictive requirement imposed by any of the other United States. See Record in No. 70-21, Appendix D to Memorandum in Support of Motion for Summary Judgment.

B. Sections 3513.257 and 3513.258, governing independent candidate access to the ballot is unconstitutional.

Sections 3513.257 and 3513.258 require independent candidates for state or federal office to submit petitions signed by not less than 4% of the entire vote cast for governor or presidential electors at the last preceding regular state election. (Sections 3513.252 and 3513.256 require independent candidates for local office to submit petitions signed by not less than 4% of whichever is the greater vote cast for governor or presidential electors in the political subdivision for which they seek office.) Prior to this Court's decision in *Williams* v. *Rhodes,* the Ohio election laws required petitions containing the signatures of 7% of the vote cast for governor in the last preceding regular election. Even as amended, these provisions are subject to the same constitutional infirmity as §3517.01 which applies to political parties.

The decisions of this Court since *Williams* v. *Rhodes* do not mandate reversal in this case. *Jenness* v. *Fortson,* 29 L.Ed.2d 554 upheld a requirement that independent candidates produce petitions signed by 5% of the registered voters. But the 5% requirement was the only hurdle that an independent candidate had to clear in order to get on

the ballot. Similarly, in *Jackson* v. *Ogilvie,* 325 F. Supp. 864 (N.D. Ill. 1971), *aff'd without opinion,* 29 L.Ed.2d 705, the 5% requirement was the only relevant requirement an independent candidate had to comply with, and the deadline was merely 64 days prior to the general election. 325 F. Supp. at 869.[7]

In Ohio, on the other hand, there are additional onerous burdens. Many of these have been surveyed in the argument in this Brief concerning small and new party access to the ballot. Several of the burdens pertain directly to the situation of independent candidates. First, Ohio now provides for write-in votes. But the right is limited. A would-be write-in candidate must file a declaration of intent 20 days prior to the election, and he must pay a filing fee (§3513.041). Second, at least 200 signatures for an independent candidate for state-wide office must be collected from each of thirty counties, and no more than one-fourth of the total signatures required may be obtained from residents of one county (§3513.258). (The unconstitutionality of this provision is taken, *infra,* pp. 45-48.) Third, independent candidates in Ohio, unlike those in Georgia or Illinois have an "unreasonably early filing deadline" (*Jenness* v. *Fortson,* 29 L.Ed.2d at 560), which requires that the petitions be filed "not later than 4:00 P.M. of the ninetieth day before the first Tuesday after the first Monday in May immediately preceding such general

[7] The other case relied upon by the defendants, *Beller* v. *Adams,* 235 So. 2d 502 (Fla. 1970), did not involve an independent candidate, but rather the candidate of a small political party. Moreover, although the court in that case upheld a five per cent requirement, it struck down a restrictive deadline requirement. It was, in effect, a decision upholding a per cent requirement in isolation. See also, *Beller* v. *Kirk,* 328 F. Supp. 485 (S.D. Fla. 1970), *aff'd without opinion, sub nom. Beller* v. *Askew,* 29 L.Ed.2d 705.

election" (§§3513.192, 3513.356, 3513.257, and 3513.258). In other words, an independent candidate desirous of running in the November, 1970, election was required to file his petition in February.[8]

Given the "totality" of the Ohio election laws now before this Court, and the Ohio history, the court below clearly was correct in finding that:

> "[T]he state has shown no compelling state interest in raising the [pre-1952] one percent requirement to seven percent or to the present four percent, nor has it demonstrated a compelling reason for the four percent requirement" (App. 66).

The decision enjoining the 4% requirement should be affirmed. The order, however, should be extended in the same fashion the order concerning the political party signature requirement should be extended. See pp. 41-42, *supra*.

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[8] The filing deadline was upheld by the court below (App. 67-68). The Jurisdictional Statement which specifically raises this issue has not been acted upon by the Court. *Sweetenham* v. *Rhodes*, jurisdictional statement filed, Oct. 2, 1970, 39 U.S.L.W. 3151 (No. 70-15, 1971 Term).

V.

The requirements of Section 3513.258, that an independent candidate for state-wide office file petitions containing signatures of two hundred electors from each of thirty counties and that no more than one-fourth of the total signatures required to be obtained by an independent candidate be obtained from one county, deny equal protection of the laws.

Section 3513.258 requires that independent candidates for state-wide office file a nominating petition containing a specified number of signatures. In addition, the statute requires that at least 200 of these signatures be obtained from each of thirty counties, and that no more than one-fourth of the total signatures required be obtained from one county. But, "Ohio has eighty-eight counties. In the 1960 census Ohio had a total population of 9,705,336 persons. Over two-thirds of Ohio's population lives in the sixteen largest counties. Over fifty percent of Ohio's population lives in the seven largest counties." (App. 63, opinion of the court below.)

Because of the unequal distribution of population among Ohio's counties, these requirements deny equal protection of the laws. First, as the court below noted, "Under Section 3513.258 the fifty percent of Ohio's qualified voters living in its seven largest counties are disabled from nominating independent candidates for statewide office". (App. 63). Second, the total number of voters in the least populous forty-nine counties have the "*same* absolute veto power" as the much larger total number of voters in the most populous forty-nine counties. *Socialist Workers Party* v. *Rockefeller,* 314 F. Supp. 984, 991 (S.D.N.Y. 1970), *aff'd,* 400 U.S. 806.

Moore v. *Ogilvie*, 394 U.S. 814 is directly in point. There the Court held that a similar Illinois statute violated the Equal Protection clause. The Illinois statute required signatures of at least 200 qualified voters from each of 50 counties. The Court found that 49 counties contained 93.4% of the state's voters; yet those voters could not themselves nominate a candidate unless he also collected 200 signatures from another county.

In the case at bar, the 29 most populous counties—one less than the number required to get on the ballot—contain 79.4% of the population of the state.[9] Yet they cannot nominate an independent candidate for statewide office, since signatures from 30 counties are required. Surely, the constitutional infirmity that inheres in the unequal voting

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[9] The population of Ohio's 29 most populous counties, as of April 1, 1970, is as follows:

1.	Cuyahoga	1,701,640
2.	Hamilton	915,370
3.	Franklin	822,336
4.	Montgomery	599,996
5.	Summit	550,234
6.	Lucas	478,966
7.	Stark	368,756
8.	Mahoning	301,513
9.	Lorain	255,612
10.	Trumbull	231,567
11.	Butler	218,201
12.	Lake	196,126
13.	Clark	153,197
14.	Richland	129,162
15.	Greene	124,285
16.	Portage	123,251
17.	Allen	110,849
18.	Columbiana	107,435
19.	Licking	106,547
20.	Ashtabula	97,318
21.	Jefferson	95,121
22.	Clermont	94,730

power of citizens of different counties cannot turn on the difference between a disenfranchised majority of 93.4% (Illinois) and a disenfranchised majority of 79.4% (Ohio). Nor can it turn, as the defendants suggest, on the percentage of counties from which signatures are required (Brief p. 47). In both Illinois and Ohio, the discrimination against residents of the more populous counties is considerable. *Socialist Workers Party* v. *Rockefeller*, 314 F. Supp. 984 (S.D.N.Y. 1970), *aff'd*, 400 U.S. 806, involved the New York statute which required fifty signatures from each county. That law was said to be "constitutionally indistinguishable" from the statute involved in *Moore*. 314 F. Supp. at 991. *Socialist Workers Party* v. *Hafe*, 304 F. Supp. 534 (E.D. Mich. 1969) invalidated a statute requiring at least 100 signatures from each of 10 counties.

The defendants also attempt to justify the imbalance by arguing that: "A state-wide candidate should not only know the problems and needs of the citizens in all counties of the State, but some representative number of voters from at least a significant geographical, as well as numerical portion of the state should be backing him in his solutions, programs and ideas" (Brief at 46). This argument was laid to rest by the Court in *Moore* v. *Ogilvie*:

23.	Wood	88,864
24.	Wayne	86,592
25.	Warren	85,025
26.	Miami	83,113
27.	Medina	82,883
28.	Belmont	80,072
29.	Scioto	77,082
	TOTAL	8,365,843

The state's population as of that date was 10,542,030. See Boston Herald Traveler, The 1971 World Almanac 455-56 (1970).

> It is no answer to the argument that under the Equal Protection Clause that this law was designed to require statewide support for launching a new political party rather than support from a few localities. This law applies a rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional theme of equality among citizens in the exercise of their political rights. The idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government. 394 U.S. at 818-19.

The Ohio requirement that no more than one-fourth of the signatures required come from one county, also unconstitutionally dilutes the rights of voters in the more populous counties. As the court below declared, "There is no compelling state interest in limiting the number of qualified voters who may sign a candidate's petition" (App. 65). This requirement too is an unlawful divergence from the constitutional standard of one man one vote.

CONCLUSION

For the above reasons, Court should affirm so much of the judgment of the court below as favored their position and reverse so much of the judgment of the court below as denied them complete relief.

Respectfully submitted,

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September 1971

SOCIALIST LABOR PARTY ET AL. v. GILLIGAN, GOVERNOR OF OHIO, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

No. 70-21. Argued March 23, 1972—Decided May 30, 1972

Appellant political party, its officers, and members, attacked the constitutionality of revisions of the Ohio election code made following this Court's decision in *Socialist Labor Party* v. *Rhodes*, 393 U. S. 23, and a provision that a political party execute a loyalty affidavit under oath in order to obtain a ballot position. The District Court, deciding the case on cross-motions for summary judgment on the basis of the pleadings and supporting affidavits, upheld all appellants' challenges except that involving the oath provision. All parties appealed. A revision of the election code made after this Court noted probable jurisdiction mooted all but the oath issue. Appellants, who did not attack the oath provision in *Rhodes* and who have been on the ballot and presumably have complied with that provision since its adoption in 1941, contend that it violates the First Amendment, is impermissibly vague, does not comport with due process, and, since it applies to them and not the two major political parties, violates equal protection. *Held:* The record and pleadings on the one issue not mooted by the supervening legislation (an issue that received scant attention in appellants' complaint and none in the affidavits supporting the cross-motions for summary judgment) are inadequate for resolution of the constitutional questions presented, and in view of the abstract and speculative posture of the case the appeal must therefore be dismissed. *Rescue Army* v. *Municipal Court*, 331 U. S. 549. Pp. 585–589.

318 F. Supp. 1262, appeal dismissed.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, WHITE, BLACKMUN, and POWELL, JJ., joined. DOUGLAS, J., filed a dissenting opinion, in which BRENNAN and MARSHALL, JJ., joined, *post*, p. 589.

Sanford Jay Rosen argued the cause for appellants. With him on the brief were *Melvin L. Wulf*, *Benjamin Sheerer*, and *Jerry Gordon*.

Donald J. Guittar, Assistant Attorney General of Ohio, argued the cause for appellees. With him on the brief were *William J. Brown,* Attorney General, and *Harold C. Heiss.*

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellant Socialist Labor Party has engaged in a prolonged legal battle to invalidate various Ohio laws restricting minority party access to the ballot. Concluding that "the totality of the Ohio restrictive laws taken as a whole" violated the Equal Protection Clause of the Fourteenth Amendment, this Court struck down those laws in *Socialist Labor Party* v. *Rhodes,* 393 U. S. 23, 34 (1968).[1] Following that decision the Ohio Legislature revised the state election code, but the Party was dissatisfied with the revisions and instituted the present suit in 1970.

The Socialist Labor Party, its officers, and members joined as plaintiffs in requesting a three-judge District Court to invalidate on constitutional grounds various sections of the revised election laws of Ohio. The plaintiffs specifically challenged provisions of the Ohio election laws requiring that a party either receive a certain percentage of the vote cast in the last preceding election or else file petitions of qualified electors corresponding to the same percentage; provisions relating to the organizational structure of a party; provisions requiring that a political party elect a specified number of delegates and alternates to a state convention; and provisions requiring a party to be part of a national political party that holds national conventions at which delegates elected in state primaries nominate presidential and vice-

[1] That case was decided together with *Williams* v. *Rhodes,* 393 U. S. 23 (1968).

presidential candidates. In addition, they challenged that part of the Ohio election code requiring a political party to file an affidavit under oath stating in substance that the party is not engaged in an attempt to overthrow the government by force or violence, is not associated with a group making such an attempt, and does not carry on a program of sedition or treason as defined by the criminal law.

The case was decided on cross-motions for summary judgment, the three-judge District Court having before it the complaint and answer of the respective parties, and affidavits filed pursuant to Fed. Rule Civ. Proc. 56. The court ruled on the merits in favor of all of appellants' constitutional challenges to the Ohio election laws except that involving the oath requirement, with respect to which it ruled in favor of the appellees. Both sides appealed to this Court, and we noted probable jurisdiction. 401 U. S. 991 (1971).

Since then, the posture of this litigation has undergone a significant change. On December 23, 1971, the Ohio Legislature enacted Senate Bill No. 460, which embodied an extensive revision of the state election code. Both sides now agree that the passage of this act renders moot all but one of the issues decided below. The one challenged provision that remains unamended is the state's requirement that a political party execute the above-described affidavit under oath in order to obtain a position on the ballot.

Appellants' 1970 complaint represented a broadside attack against interrelated and allegedly overly restrictive provisions of the Ohio election laws. The three-judge District Court, in its ruling for the appellants on the issues that have now become moot, stated:

> "The 1969 amendments to the election laws merely perpetuate the restrictive laws enacted between 1948 and 1952. The overall effect of these laws

is still to deny to plaintiffs their constitutional right of political association." 318 F. Supp. 1262, 1269–1270 (footnote omitted).

Thus appellants, at the time they filed their 1970 action, were fenced out of the political process by a series of restrictive provisions that prevented them from making any progress toward a position on the ballot as a designated political party. Their challenge was necessarily of a somewhat abstract character, since under their allegations they were able to comply with very few of the provisions regulating access to the ballot. Now, however, with the enactment of a revised election code, the abstract character of the single remaining challenge to the Ohio election procedures stands out all the more.

Appellants did not in their action that came here in 1968 challenge the loyalty oath. Their 1970 complaint respecting the loyalty oath is singularly sparse in its factual allegations. There is no suggestion in it that the Socialist Labor Party has ever refused in the past, or will now refuse, to sign the required oath. There is no allegation of injury that the party has suffered or will suffer because of the existence of the oath requirement.

It is fairly inferable that the absence of such allegations is not merely an oversight in the drafting of a pleading. The requirement of the affidavit under oath was enacted in 1941, 119 Ohio Laws 586, and has remained continuously in force since that date. The Socialist Labor Party has appeared on the state ballot since the law's passage, and, unless the state officials have ignored what appear to be mandatory oath provisions, it is reasonable to conclude that the party has in the past executed the required affidavit.

It is axiomatic that the federal courts do not decide abstract questions posed by parties who lack "a personal stake in the outcome of the controversy." *Baker* v.

Carr, 369 U. S. 186, 204 (1962); *Flast* v. *Cohen*, 392 U. S. 83, 101 (1968). Appellants argue that the affidavit requirement violates the First and Fourteenth Amendments, but their pleadings fail to allege that the requirement has in any way affected their speech or conduct, or that executing the oath would impair the exercise of any right that they have as a political party or as members of a political party. They contend that to require it of them but not of the two major political parties denies them equal protection, but they do not allege any particulars that make the requirement other than a hypothetical burden. Finally, they claim that the required affidavit is impermissibly vague and that its enforcement procedures do not comport with due process. But the record before the three-judge District Court, and now before this Court, is extraordinarily skimpy in the sort of proved or admitted facts that would enable us to adjudicate this claim. Since appellants have previously secured a position on the ballot with no untoward consequences, the gravamen of their claim that it injures them remains quite unclear.

In the usual case in which this Court has passed on the validity of similar oath provisions, the party challenging constitutionality was either unable or unwilling to execute the required oath and, in the circumstances of the particular case, sustained, or faced the immediate prospect of sustaining, some direct injury as a result of the penalty provisions associated with the oath. See, *e. g.*, *Cole* v. *Richardson*, 405 U. S. 676 (1972); *Keyishian* v. *Board of Regents*, 385 U. S. 589 (1967); *Wieman* v. *Updegraff*, 344 U. S. 183 (1952).

In *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 283–285 (1961), the appellants were public school teachers who had been threatened with discharge for their refusal to execute the required oath. The Court held that even though appellants might be able to sign the

required oath in good conscience, the record there indicated that they would still be subject to possible hazards of a perjury conviction by reason of the vagueness of the oath's language. In the present case, however, appellants have apparently signed the oath at previous times, and so far as this record shows they have suffered no injury as a result. The State has never questioned the truth of the affidavit, and appellants' conduct and associations have not been constricted as a result of their having executed the affidavit.

The long and the short of the matter is that we know very little more about the operation of the Ohio affidavit procedure as a result of this lawsuit than we would if a prospective plaintiff who had never set foot in Ohio had simply picked this section of the Ohio election laws out of the statute books and filed a complaint in the District Court setting forth the allegedly offending provisions and requesting an injunction against their enforcement. These plaintiffs may well meet the technical requirement of standing, and they may be parties to a case or controversy, but their case has not given any particularity to the effect on them of Ohio's affidavit requirement.

This Court has recognized in the past that even when jurisdiction exists it should not be exercised unless the case "tenders the underlying constitutional issues in clean-cut and concrete form." *Rescue Army* v. *Municipal Court*, 331 U. S. 549, 584 (1947). Problems of prematurity and abstractness may well present "insuperable obstacles" to the exercise of the Court's jurisdiction, even though that jurisdiction is technically present. *Id.*, at 574.[2]

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[2] Despite the contrary implication in the dissent, see *post*, at 592–593, n. 3, the holding of *Rescue Army* has been applied by this Court to numerous appeals in which no statutory or constitutional impediment to jurisdiction was present. See, *e. g.*, *Cowgill* v. *California*, 396 U. S. 371 (1970) (Harlan, J., concurring); *Atlanta Newspapers, Inc.* v. *Grimes*, 364 U. S. 290 (1960); *Teamsters* v. *Denver Milk Pro-*

We find that the present posture of this case raises just such an obstacle. All issues litigated below have become moot except for one that received scant attention in appellants' complaint and was treated not at all in the affidavits filed in support of the cross-motions for summary judgment. Nothing in the record shows that appellants have suffered any injury thus far, and the law's future effect remains wholly speculative. Notwithstanding the indications that appellants have in the past executed the required affidavit without injury, it is of course possible that at some future time they may be able to demonstrate some injury as a result of the application of the provision challenged here. Our adjudication of the merits of such a challenge will await that time. This appeal must be dismissed. *Rescue Army* v. *Municipal Court, supra,* at 585.

It is so ordered.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL concur, dissenting.

The oath required of appellants for political recognition in Ohio is plainly unconstitutional as a denial of

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ducers, Inc., 334 U. S. 809 (1948). Nor has there ever been any suggestion that *Rescue Army* should apply only to appeals from state, rather than federal, courts. See *United States* v. *Frueauf,* 365 U. S. 146, 157 (1961); *United States* v. *CIO,* 335 U. S. 106, 125-126 (1948) (Frankfurter, J., concurring). See also *Albertson* v. *Millard,* 345 U. S. 242, 245 (1953). Despite this lack of case support, the dissent argues that the *Rescue Army* doctrine should not apply to the present case, since it is an appeal from a federal court judgment pursuant to 28 U. S. C. § 1253, whereas *Rescue Army* was an appeal from a state court judgment pursuant to 28 U. S. C. § 1257. This distinction is evanescent. Under both grants of jurisdiction this Court is obligated to rule upon those properly presented questions that are necessary for decision of the case. But when the issues are not presented with the clarity needed for effective adjudication, appellate review of a federal court judgment is every bit as inappropriate as was review of a state court judgment in *Rescue Army.*

equal protection. Because I believe this a proper case for declaratory relief, I would therefore reverse the judgment below.

In order to "be recognized or be given a place on the ballot in any primary or general election," Ohio requires that members of political parties file a loyalty oath with the Secretary of State. Ohio Rev. Code Ann. § 3517.07 (1960) (see appendix to this opinion). I need not consider the vagueness or overbreadth of the Ohio oath, for my views on that subject have been stated over and over again.[1] For the present case, it is sufficient for my decision that Ohio requires the oath based upon the invidious classification of political allegiance.

An exception from the oath requirement is made for "any political party or group which has had a place on the ballot in each national and gubernatorial election since the year 1900." Ohio Rev. Code Ann. § 3517.07 (1960). It is conceded that this exemption applies only to the Democratic and Republican Parties (see Plaintiffs' Motion for Summary Judgment), and we may properly treat it as if it were written in precisely those terms. See *Lane* v. *Wilson*, 307 U. S. 268 (1939); *Guinn* v. *United States*, 238 U. S. 347 (1915). This exception is thus part of the broader pattern of Ohio's discriminatory preference for the two established political parties. We considered this discrimination before in *Williams* v. *Rhodes*, 393 U. S. 23, 31 (1968), and said:

> "No extended discussion is required to establish that the Ohio laws before us give the two old,

[1] *E. g.*, *Cole* v. *Richardson*, 405 U. S. 676, 687 (1972) (dissenting opinion); *W. E. B. DuBois Clubs* v. *Clark*, 389 U. S. 309, 313 (1967) (dissenting opinion); *Elfbrandt* v. *Russell*, 384 U. S. 11 (1966); *Nostrand* v. *Little*, 362 U. S. 474, 476 (1960) (dissenting opinion); *First Unitarian Church* v. *Los Angeles*, 357 U. S. 545, 547 (1958) (concurring opinion); *Speiser* v. *Randall*, 357 U. S. 513, 532 (1958) (concurring opinion).

established parties a decided advantage over any new parties struggling for existence and thus place substantially unequal burdens on both the right to vote and the right to associate. The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes. So also, the right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot. In determining whether the State has power to place such unequal burdens on minority groups where rights of this kind are at stake, the decisions of this Court have consistently held that 'only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms.'"

In a separate opinion, I noted, "The Equal Protection Clause of the Fourteenth Amendment permits the States to make classifications and does not require them to treat different groups uniformly. Nevertheless, it bans any 'invidious discrimination.'" *Id.*, at 39. Classifications based upon political or religious associations, beliefs, or philosophy are such "invidious" classifications, as Mr. Justice Black said in *Cox* v. *Louisiana*, 379 U. S. 559, 581:

"[B]y specifically permitting picketing for the publication of labor union views, Louisiana is attempting to pick and choose among the views it is willing to have discussed on its streets. It thus is trying to prescribe by law what matters of public interest people whom it allows to assemble on its streets may and may not discuss. This seems to me to be censorship in a most odious form, un-

constitutional under the First and Fourteenth Amendments. And to deny this appellant and his group use of the streets because of their views against racial discrimination, while allowing other groups to use the streets to voice opinions on other subjects, also amounts, I think, to an invidious discrimination forbidden by the Equal Protection Clause of the Fourteenth Amendment."

"While I doubt that any state interest can be so compelling as to justify an impairment of associational freedoms in the area of philosophy—political or otherwise," *Lippitt* v. *Cipollone*, 404 U. S. 1032, 1033–1034 (DOUGLAS, J., dissenting); see also *Williams* v. *Rhodes*, *supra*, at 39–40 (separate opinion of DOUGLAS, J.), the appellees have not even offered a colorable explanation for the disparate treatment of the separate political parties. I conclude, therefore, that the unequal burden placed upon appellants is unconstitutional.[2]

The Court does not reach appellants' challenge to the loyalty oath, however, because it concludes that "they do not allege any particulars that make the [oath] requirement other than a hypothetical burden." *Ante*, at 587. In sharp contrast to the decision in *Rescue Army* v. *Municipal Court*, 331 U. S. 549 (1947), the only case upon which it relies,[3] the Court does not explain what

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[2] While the District Court acknowledged that one of appellants' challenges to the oath was that it "violates the Equal Protection Clause by excepting the Democratic and Republican Parties from its ambit," 318 F. Supp. 1262, 1270, the court inexplicably did not address this argument.

[3] *Rescue Army* came on appeal from the Supreme Court of California and involved a complex state statutory scheme.

The present case, by contrast, comes from a United States District Court where our appellate jurisdiction is founded upon 28 U. S. C. § 1253. It is, I think, an undue extension of *Rescue Army* to apply it to an appeal from a federal court which properly heard

additional facts it feels are necessary to reach the merits. In basing its decision on this ground, I fear that the Court has taken an unduly narrow view of declaratory relief.

Appellants argue that the oath is facially invalid for the invidious classification it creates, for its overbreadth

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and considered a federal constitutional question. See H. Hart & H. Wechsler, The Federal Courts and the Federal System 149 (1953). Our differing treatment of appeals from federal and state courts relates to the difference between the courts from which the appeals are taken. If an appeal from a state court does not fall within Art. III, it would in nowise affect the jurisdiction of the court from which the appeal was taken. *Doremus* v. *Board of Education*, 342 U. S. 429, 434 (1952). The same cannot be said, however, of appeals from federal courts, *e. g.*, *Muskrat* v. *United States*, 219 U. S. 346. Thus, "[t]he established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." *United States* v. *Munsingwear*, 340 U. S. 36, 39 (1950); see R. Robertson & F. Kirkham, Jurisdiction of the Supreme Court § 273, p. 501 (1951). "If the proceeding is one to review the decision of a state court," however, our practice is to "remand the cause to the state court in order that that court may take such further proceedings as may be deemed appropriate."

The cases cited by the majority, *ante*, at 589 n. 2, do not support today's treatment of an appeal from an Art. III court. In *United States* v. *Fruehauf*, 365 U. S. 146 (1961), the District Court dismissed an indictment and we reversed and remanded holding that the provable facts might bring the case within the statute. In *United States* v. *CIO*, 335 U. S. 106 (1948), we affirmed the judgment of the District Court which had dismissed an indictment, because the facts alleged did not state an offense; and we did not therefore reach the constitutional issue relied upon by the District Court. Finally, *Albertson* v. *Millard*, 345 U. S. 242 (1953), was an abstention case in which we vacated the judgment of the District Court and remanded with directions to hold the case until the state-law questions had been resolved. None of these cases, therefore, stands for the proposition that we may dismiss a perfected appeal from a properly entered judgment of an Art. III court.

and its vagueness. Certainly such challenges to the facial validity of a statute are ideally suited for declaratory judgment. *Moore* v. *Ogilvie*, 394 U. S. 814. There can be no question of appellants' stake in the controversy, for if they refuse to subscribe to the oath they will be denied political recognition, cf. *Law Students Research Council* v. *Wadmond*, 401 U. S. 154 (1971); *Baird* v. *State Bar of Arizona*, 401 U. S. 1 (1971); while, in order to obtain such recognition, they must subscribe to an unconstitutional oath or subject themselves to an invidious classification.[4] Cf. *Keyishian* v. *Board of Regents*, 385 U. S. 589 (1967); *Cramp* v. *Board of Public Instruction*, 368 U. S. 278 (1961).[5] Under either alternative, appellants have "such a personal stake in the outcome . . . as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends." *Baker* v. *Carr*, 369 U. S. 186, 204 (1962). Nor is this a case where appellants' injury is only speculative, cf. *Golden* v. *Zwickler*, 394 U. S.

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[4] The suggestion that "appellants have apparently signed the oath at previous times," *ante*, at 588, and thus somehow have waived their right to object to the oath, is unsupported by the record. Appellants include not only the Socialist Labor Party but also its named officers and members who would be required to execute the oath. Whatever relevance there may be to the fact that the Socialist Labor Party was on the ballot in Ohio in 1946, that fact has no bearing with regard to the individual appellants.

[5] As to *Cramp*, it is suggested that "the record there indicated that [Cramp] would still be subject to possible hazards of a perjury conviction by reason of the vagueness of the oath's language." *Ante*, at 588. In our opinion in *Cramp*, however, we noted that Cramp alleged in his complaint "that he 'is a loyal American and does not decline to execute or subscribe to the aforesaid oath for fear of the penalties provided by law for a false oath,' " 368 U. S., at 281. In any event, Ohio also subjects oath takers to the "possible hazards of a perjury conviction," see Ohio Rev. Code Ann. §§ 3599.36, 2917.25 (1960), so *Cramp* is not distinguishable.

103 (1969), for they allege that they "will continue to nominate candidates for political office in Ohio in the future."

Evers v. *Dwyer*, 358 U. S. 202 (1958), is relevant here. The appellant in that case was a Black who sought a declaratory judgment that a state statute requiring the segregation of the races on municipal buses was unconstitutional. In dismissing the complaint, the District Court took the approach this Court takes today and reasoned that appellant "ha[d] not been injured at all" because "he was not a regular or even an occasional user of bus transportation." We summarily reversed that decision saying that an individual "subjected by statute to special disabilities necessarily has, we think, a substantial, immediate, and real interest in the validity of the statute which imposes the disability." 358 U. S., at 204. And see *Gooding* v. *Wilson*, 405 U. S. 518.

In *Evers*, we did not base our decision on any consideration of whether the seats Blacks were required to take were better or worse than those available to Whites. Rather, we held that members of a disfavored minority could challenge unconstitutional statutory classifications which set them apart. That was the "disability" to which we referred. Appellants are members of an unfavored political minority in Ohio and they too should be able to challenge invidious classifications which set them apart from the favored majority.

Since 1946, appellants and other minority political parties in Ohio have been repressed by legislation enacted by the two dominant parties. In the last four years, they have sought relief from these shackles so that their voices could be heard in the political arena.[6] But Ohio

[6] See, *e. g.*, *Lippitt* v. *Cipollone*, 404 U. S. 1032 (1972), aff'g 337 F. Supp. 1405 (ND Ohio 1971); *Brockington* v. *Rhodes*, 396 U. S. 41 (1969); *William* v. *Rhodes*, 393 U. S. 23 (1968), aff'g *sub nom.*

has erected innumerable roadblocks to their participation. Under the majority's decision, each obstacle will require a separate lawsuit because it will only be after they have been frustrated at a particular turn that they will be able to satisfy this new test for declaratory relief.

The modern remedy of declaratory judgments should be used to simplify not multiply litigation.

I would reverse the judgment below.

APPENDIX TO OPINION OF DOUGLAS, J., DISSENTING

Ohio Rev. Code Ann. § 3517.07 (1960):

"No political party or group which advocates, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government or which carries on a program of sedition or treason by radio, speech, or press or which has in any manner any connection with any foreign government or power or which in any manner has any connection with any group or organization so connected or so advocating the overthrow, by force or violence, of our local, state, or national government or so carrying on a program of sedition or treason by radio, speech, or press shall be recognized or be given a place on the ballot in any primary or general election held in the state or in any political subdivision thereof.

"Any party or group desiring to have a place on the ballot shall file with the secretary of state and with the board of elections in each county in which it desires to have a place on the ballot an affidavit made by not less than ten members of such party, not less than

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Socialist Labor Party v. *Rhodes*, 290 F. Supp. 983 (Ohio 1968); *State ex rel. Bible* v. *Board of Elections*, 22 Ohio St. 2d 57, 258 N. E. 2d 227; see also *State ex rel. Beck* v. *Hummel*, 150 Ohio St. 127, 80 N. E. 2d 899.

three of whom shall be executive officers thereof, under oath stating that it does not advocate, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government; that it does not carry on any program of sedition or treason by radio, speech, or press; that it has no connection with any foreign government or power; that it has no connection with any group or organization so connected or so advocating, either directly or indirectly, the overthrow, by force or violence, of our local, state, or national government or so carrying on a program of sedition or treason by radio, speech, or press.

"Said affidavit shall be filed not less than six nor more than nine months prior to the primary or general election in which the party or group desires to have a place on the ballot. The secretary of state shall investigate the facts appearing in the affidavit and shall within sixty days after the filing thereof find and certify whether or not this party or group is entitled under this section to have a place on the ballot.

"Any qualified member of such party or group or any elector of this state may appeal from the finding of the secretary of state to the supreme court of Ohio.

"This section does not apply to any political party or group which has had a place on the ballot in each national and gubernatorial election since the year 1900."